

AN
HISTORICAL
AND
CHRONOLOGICAL VIEW
OF
ROMAN LAW.

WITH
NOTES AND ILLUSTRATIONS.

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TO THE RIGHT HONOURABLE
CHARLES LORD CAMDEN

THE FOLLOWING WORK
IS WITH GREAT RESPECT INSCRIBED

BY HIS LORDSHIP'S

MOST OBLIGED

A N D

VERY HUMBLE SERVANT,

ALEXANDER C. SCHOMBERG.

TO THE RIGHT HONORABLE
THE LORDS OF THE
CHAMBERLAIN
THE LORDS OF THE
TREASURY
THE LORDS OF THE
COMMONS
THE LORDS OF THE
COUNCIL
THE LORDS OF THE
JUDICIAL COMMITTEE
THE LORDS OF THE
SECRETARY OF STATE
THE LORDS OF THE
ADMIRALTY
THE LORDS OF THE
NAVY
THE LORDS OF THE
WAR
THE LORDS OF THE
AIR
THE LORDS OF THE
POST OFFICE
THE LORDS OF THE
INDIAN OFFICE
THE LORDS OF THE
COLONIAL OFFICE
THE LORDS OF THE
FOREIGN OFFICE
THE LORDS OF THE
HOME OFFICE
THE LORDS OF THE
INLAND REVENUE
THE LORDS OF THE
MINT
THE LORDS OF THE
STAMP OFFICE
THE LORDS OF THE
CUSTOMS
THE LORDS OF THE
EXCISE
THE LORDS OF THE
TREASURY
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P R E F A C E.

OF the many excellencies of the ROMAN CIVIL LAW, there is one which seems particularly striking. Every other System of Legislation, besides the injuries it receives from the necessary change of manners, language and modes of life, has its authority confined to that single Community for which it was originally framed, or at the utmost, extends it to a few neighbouring or dependant States. The ROMAN LAW on the contrary is regarded as a CODE OF UNIVERSAL JUSTICE, equally applicable to all ages and countries. Its salutary influence has been felt at different periods in parts of Europe the most remote from each other, and there is scarcely a modern nation which is not indebted to it for some of its best political and judicial institutions. Jus CIVILE ROMANUM (says Gothofred) *Legum Sanctitate et Disciplina exterarum gentium Legibus et Institutis præponderat, omniaque Populorum JURA et MORES in se comprehendit.*^a

^a *In Prax. rer. civil. Lib. 2. tit. 1.*

What

P R E F A C E.

What was figuratively said in praise of the Socratic School, that its venerable FOUNDER "had brought PHILOSOPHY down from Heaven and introduced her into human society" may perhaps with stricter truth be pronounced of those who first thought of applying the speculative wisdom of ancient Greece to POLITICAL and FORENSIC purposes. This was in the happiest manner effected by the ROMAN LAWYERS. For by constantly recurring to this source for principles of equity, to regulate the morals and direct the actions of their fellow citizens, they laid the foundation of that intimate union which in process of time took place between PHILOSOPHY and LEGISLATION. They conducted HER from the PORCH to the FORUM, delivered into her hands the Sword of Justice, and gradually reconciled her to the business and bustle of public life.

Thus those sublime maxims of moral and political virtue, which, before that time, were considered as little better than points of controversy for the Sophist or as matter of declamation for the Orator, were gradually

P R E F A C E.

ally reduced into a rational System of JURISPRUDENCE, in which the arguments of the PHILOSOPHER were strengthened and enforced by the authority of the MAGISTRATE, "*Quid enim est aliud Jus Romanum, nisi Ratio Imperans et Armata Sapientia, Sententiæque Philosophorum in Publica Jussa conversæ.*"^b It should be observed also that the materials which compose this System were neither hastily collected nor rashly arranged. The Foundation of the Fabric was coeval with that of the City itself, but the Superstructure required the labour of more than twelve Centuries to complete it. In other words it was "the result of long attention and sober deliberation; conducted by Lawgivers of great Temper and Philosophy; planned upon the fairest and most rational Principles of Humanity; shaped and moulded by comparative Schemes of Polity; matured by long experience; and lastly (by a Revolution full of Equity) as it was formed upon the best Models of

^b GRAVINÆ. *Oratio De Jurisprudentiâ.*

Anti-

P R E F A C E.

Antiquity, so has it been honoured, illustrated and copied by many States and People that followed after.^c”

It will be needless in this place to repeat what has been so often and so ably said of the benefits to be derived from the study of the ROMAN LAW. Its connection with various branches of Polite Letters, and in a particular manner with HISTORY and CRITICISM must be obvious to all who are conversant with ancient learning, and has been beautifully exemplified in the Works of BYNKERSHOEK, HEINECCIUS, GRAVINA, and TAYLOR; where from a happy application of juridical knowledge to the illustration of the Manners, Customs and Language of remote Ages, the fullest light is thrown upon many points of Classical Antiquities, which, but for this circumstance must have remained in their original obscurity.

^c TAYLOR. *Elements of Civil Law*. Pref. P. 4.

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May 3. 1785.

A CHRO-

A
CHRONOLOGICAL VIEW
O F
R O M A N L A W.

ROME under the regal government had but few laws. She depended principally upon the will of her Sovereigns, both for political and judicial regulations.

A. U. C.

*Dig. l. 1 tit. II. 2 Et quidem
iure iuratum nostrae populus sine
lege certa sine iure certo primum
agere instituit: omniaque mox a
Regibus gubernabantur.*

Her chief legislators for the first three centuries were Romulus, Numa, Tarquinius Priscus and Servius Tullius; and the laws enacted by these princes are supposed to have been strongly tinged with the manners of their respective countries.

According to some authors the laws of Romulus had respect chiefly to marriages, the education of children and the rights of parents.¹ His successor added to these such

Romulus

Numa

39

¹ The laws of Romulus collected from Plutarch, Dionysius, Livy, &c. and reduced under the twelve following heads, are

A

illus.

A. U. C. as took cognizance of murder, mutual compacts, funerals and the cultivation of lands. But the chief aim of this pious king appears to have been the regulation of religious ceremonies and the establishment of sacred institutions. The *Feciales*, a college of military priests, was erected by him; and from the salutary tendency of his institutions he has been with great

illustrated by Andreas Cirino in the 58th Chapter of his *Varie Lectiones de Urbe Roma*: from whence it appears that domestic regulations, though perhaps the principal, were not the only object of Romulus's legislation. I. Deos patrios colunto, externas superstitiones aut fabulas ne admiscunto. II. Ne quid inauspicato publice gerunto. III. Nocturna sacrificia pervigiliaque amoventor. IV. Rex sacrorum præses, Legum custos esto. Judicia exerceto. Belli imperium habeto. V. Patres sacerdotia ac magistratus capiunto, plebeis patroni sunt. VI. Populi suffragia sunt. Magistratus creanto, leges sciscunt, pacem bellumque jubento. VII. Mænia sancta existimeto. VIII. Uxor farreatione viro juncta in sacra et bona ejus ventio, jus devortendi ne esto. IX. Si stuprum commisit, aliudque quid peccasset, Maritus judex et vindex esto, deque eo cum cognatis cognoscito. X. Temetum mulier ne bibito. XI. Quod natum erit parentes tollunto, monstrosos tamen partus sine fraude exponi fas est. XII. In liberos suprema patrum auctoritas esto, venundare, occidere liceto.

pro-

propriety called by some, the founder of the Roman law.² A. U. C.

The laws of Servius Tullius relate to contracts, usury and imprisonment for debt. They were for the most part collected from the laws of his predecessors, which so early as his reign had begun to fall into neglect; and it is for the great zeal which Servius shewed in re-establishing their lost authority, that he is called by Tacitus "præcipuus sancitor legum." Servius Tullius.
175

The whole of the *leges regiae*, together with the *mores patrii*, which constituted part of the Roman polity during the regal state, were about the time of Tarquin the last king of Rome collected into a body Jus civile
Papyrianum
246

² It is of this king that Virgil speaks in the sixth Æneid.

"Quis procul ille autem ramis insignis Olivæ

"Sacra ferens? nosco crines incanaque menta

"Romani regis; *primus* qui legibus urbem

"Fundabit; Curibus parvis et paupere terrâ

"Missus in imperium magnum."

Lib. 6. v. 808.

A. U. C. by Sextus Papyrius.³ This collection was called after his name, "non
Dig. l. 1. tit. 11 "quia Papyrius de suo quicquam
 "ibi adjecit, sed quod leges sine
 "ordine latas in unum composuit"
 and is considered as the source of
 the Roman *written law*.⁴

Idque prope viginti annis papyrus est. 244--304 For about sixty years after the
Dig. l. 2. t. 2. Pomponius

3 "Ejectis regibus, Papyrius sacras omnes profanasque leges a regibus latas in usum publicum deduxit, conscripto codice, quem postea *jus civile Papyrianum* appellarunt—
 "Hunc autem Papyrii librum ad ætatem Pomponii (*the middle of the second century*) pervenisse facile ex eo constat." Forster. Lib. 2. cap. 2. Historia juris civilis Romanorum. A fragment of this work is preserved in Macrobius Saturnal. Lib. 3. cap. 11. and the laws of which it was composed may be collected among many other treatises of the same nature from Urfinus's compilation of the *leges regie*, published at Rome, anno 1583.

4 "Profectæ leges regie potissimum sunt a Romulo, Numa et Servio Tullio; quorum primus *natura jus* extulit; alter "*jus gentium* expressit; postremus *jure civili* constituendo vacavit." Gravina de ortu et progressu juris civilis. Cap. 31. This has been considered by some as little better than a piece of ingenious refinement. If it be understood however as referring only to the character and tendency of these several laws and not to the intention of the legislators in framing them, the observation perhaps may not appear altogether ill founded.

ex-

expulsion of her kings, Rome is A. U. C.
supposed to have been governed
“incerto magis jure quam per la-
“tam legem.” i. e. by such of the
leges regiae as had not been abrogat-
ed, and by the *mores patrii*. In cases
where these were deficient, the will
of the consuls (as that of the kings
had formerly been) was substituted
in the place of law. At length
however it was found necessary to
have some established system of po-
lity in order that (as Livy expresses
it) “Quod populus in se jus dede-
“rit, eo consulem usurum; non
“ipso libidinem ac licentiam su-
“am pro lege habituros.” This
proposal had long been a subject of
heavy contention between the pa-
trician and plebeian parties, not
only with regard to the expediency
of the measure itself but to the
mode also of putting it in executi-
on. It was at last agreed to send
deputies into Greece with a com-
mission to examine the laws and
institutions which prevailed in that
country, and to make a selection of

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such

- A. U. C. such as should appear best calculated to form a system for the regulation of the Roman commonwealth.⁵ At the end of little more than two years they returned, and ten persons (called decemvirs) were appointed for the purpose of compiling and digesting the materials. In doing this they adopted many of the *leges regiae* and *mores patrii*, and connecting them with the new laws, formed a body of jurisprudence, divided into *ten* distinct tables. In the course of another year *two* more tables were added. The work being then thought complete, was exposed to public view in the forum, received the approbation of the people, and was from
- 303
- XII Tab. 304 that time considered as having in the fullest extent the force of law, and as constituting the basis

5 "Missi legati Athenas—Jussique inclytas leges Solonis "describere et aliarum Græciæ civitatum instituta, mores, "juraque noscere." Liv. Lib. 3. And Florus thus speaks of the event of this embassy "Allatas è Græciâ leges decem "principes lecti, jubente populo, conscripserant, ordinataque "erat in duodecim tabulis tota justitia." Lib. 1. cap. 24.

upon which the vast fabric of the **A. U. C.** Roman civil law was gradually erected.⁶ The compilation is mentioned under various names by ancient authors, such as *jus priscum*, *jus decemvirale*, *tabulæ peccare vetantes*, by the civilians *lex antiqua*, *jus civile*, *jus antiquissimum*, and by the Greek jurists *dodeca-deltos*, though its more general title has always been *jus duodecim tabularum*.⁷ [A]

The decemviri received such full powers that no appeal was to be made from their decisions. neque provocatio ab eis sit: erat a religione majorum patrum.

We now proceed to consider the several branches of Roman polity

6 "Fuit et Hermodori Ephesii in comitio legum quas decemviri scribebant, interpretis statua publice dicata." Plin. hist. nat. lib. 34. cap. 5. This Hermodorus, we are told, was employed by the decemvirs to explain the Greek laws from whence the tables are compiled, and some are of opinion that many new laws were adopted at his suggestion.

Dig. l. 1. t. 2

7 For an account of this establishment of Roman jurisprudence, I refer the reader to the ancient historians, and for more particular information, to the "Quatuor fontes juris civilis, by Jac. Gothofred." Franc. Balduin's commentary on the XII tables, in two books; edit. Paris, ann. 1552.—The second book of Gravina's "origines juris civilis" and the Dodeca deltas of Rittershusius, published at the beginning of the last century.

which

A. U. C. which arose during the existence of the commonwealth.

Leges, *Plebiscita*, and *Senatus consulta* were indeed separate channels of law before the institution of the twelve tables, and were distinguished by the following characters.

Leges

The first were, as Justinian defines them, "*Quæ populus Romanus Senatorio magistratu interrogante, veluti consule, constituit.*" They are laws in the strictest sense, and may be considered as a generic term applicable to the ordinances of every species of legal assembly; "*generale jussum populi aut plebis rogante magistratu.*" Such as these were coeval with the foundation of the city, and the majority of the laws fell under this description.

Plebiscita

The second sort were, according to the same Emperor's definition, "*Quæ plebs plebeio magistratu interrogante, veluti tribuno, constituit.*" Before the creation of tribunes or plebeian magi-

magistrates this species of law did A. U. C.
not exist, and at its first institution
was very confined in its influence;
the Patricians did not consider
themselves as bound by it, neither
properly speaking was it law, in
the strict sense of the word; for
it appears to have owed its efficacy
to compact and connivance rather
than to authority. By the *Lex* 306
Horatia however it was determined,
“ut quod tributum plebs jussisset,
“populum teneret.” The *Lex Pub-* 415
lilia afterwards passed to alter the
word *Populum* to *Quirites*; and the
Patricians having attempted to
evade the foregoing act, it was fi-
nally ratified by the *Lex Hortensia*.⁷ 467

The last of these three species of
law was defined to be “Quæ sena- Senatus-
tus jubet atque constituit.” But consulta
when a negative was put upon any

7 “Neque solum illa *plebiscita* sunt quæ plebs in discordiâ
“fecit; sed ut omnia quæ Tribunus rogabat et scisciebat non
“*Hortensia* solum sed aliis quoque legibus *Horatiâ* et *Publiliâ*
“jassum est, omnes tenerent—Illud itaque inter *plebiscita* et
“ceteras leges intererat quod hæc a *plebe*, illæ a *populo* rogaban-
“tur. Post *legem Hortensiam* sine controversiâ *plebiscita* pro legi-
“bus haberi cœperunt.” ANT. AUGUSTINUS *de legibus*, cap. 3.

A. U. C. decree of the Senate, it was no more than *Senatus Auctoritas*, and was not regarded as law till ratified by the people. The constant struggles between the Patricians and plebeians necessarily caused great variations in their authority. Accordingly we sometimes find the conclusions of the people carried to the Senate for ratification, and at other times the people determining upon the decrees of the Senate.⁸

Such were the characters of the three great constitutional sources of the written law till the extinction of the republic.⁹

The branches of the Roman

8 "Sub regum administratione nil actum sine Senatus-consulto fuit: adeo ut nec populi scita sine Senatus-consulto rata haberentur, quamvis postea versa ratio fuerit aucta populi potentia qui non modo lege VALERIA judiciorum capitulum potestatem accepit, instituta provocatione ad populum; sed tribunitiis contentione obtinuit, ut omnia Senatus-consulta populi judicio comprobarentur." GRAVINA de Romano imperio. Cap. 14. It is to be observed that the *Fus Gladii*, which this Valerian law transferred to the people, was originally in the hands of the Kings, and afterwards of the Consuls. It was at last delegated to an officer called *Quæstor Parricidii*. LIV. Lib. 1. cap. 48. DIG. l. 1. tit. 16. 23.

9 In various parts of GRÆVIUS's collection of Roman Antiquities, treatises occur, which may be usefully consulted upon this

law, which come next under consideration, are those which properly constitute the *Jus civile* or *Jus non scriptum* according to the definition of Pomponius, "*proprium enim, says he, jus civile illud est quod sine scripto in solâ prudentum interpretatione consistit.*"

The laws of the twelve tables were not so clear and explicit but that they admitted a variety of interpretations and constructions; these necessarily in time produced embarrassments; it was customary therefore for men learned in the law to form themselves into societies, for the purpose of elucidating ambiguous questions and giving disputed points a determinate meaning. "*Legibus latis decemviralibus necessaria fuit Fori Disputatio.*" The opinions delivered in these forensic disputations were dignified with the name of *regulæ juris*, and answer to our

Fori disputationes.

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this subject; there are however two authors who deserve particular attention. PAULUS MANUTIUS *de legibus Romanis* and ANTONIUS AUGUSTINUS *de legibus*, with the notes of FULVIUS URSINUS, both in the 2d vol. of this noble work.

A. U. C. idea of precedents and reports.¹

They passed into law by acquiescence only, and though in point of antiquity they rank before the *Responsa Prudentum*, yet from the mode in which they were delivered, they are looked upon as of inferior note.²

When the business of the law became more laborious and honourable, these private societies were converted into public schools, and the opinions there delivered were called *Interpretationes*, or *Responsa Prudentum*.

Responsa
Prudentum

500

Tiberius Coruncanus was the first public professor in this line; “princeps *publicam juris civilis pro-*

¹ It is to the decisions founded upon these *juridical disputations* that civilians allude when they use the following terms, which at the same time seem strongly to mark the distinction between *Jus scriptum* and *Jus non scriptum*; “*Veteribus placet. Vulgo traditum est—placuit prudentioribus. Receptum est propter necessarium Usum. Ita prudentes hoc interpretati sunt*,” terms which constantly occur in the Roman law books. The *regulae juris* constitute the last title in the Pandects. Lib. 50. tit. 17. *De diversis regulis juris*.

² These forensic Disputations, were collected together in ten books, by Ulpian, and also by Tryphonius in twenty.

“*fessionem*

“*fessionem, est ingressus*” says Gr- A. U. C.
vina,³ and he was followed by M.
Cato, Brutus, Scævola, Mucius
Tubero, Trebatius, Sulpitius, and
many other able Civilians, of whom
we find honourable mention in va-
rious parts of Cicero’s works. [B]
From the opinion which the people
entertained of their abilities, these
determinations were usually admit-
ted into the body of the law, “In-
“*fluxerunt in edicta magistratum*
“*atque decreta principum; itaque*
“*duritiem perdomuerunt vetusti*
“*ac directi juris;*” and this is the
reason, it has been observed, why
in the Roman system many things
are to be found, which may be
looked for in vain in the original
tables and other codes; besides, as
the opinions of these lawyers usu-
ally bore the complexion of the
philosophy which they professed,
it produced in process of time no
little confusion, and rendered the

3. Tib. Coruncanus lived at the time of the first Punic
war, and was the first plebeian who ever enjoyed the high
rank of Sovereign Pontiff.

A.U.C. decisions in the courts extremely vague and often incongruous.⁴ [C]

Jus
Honorarium

Dig. l. 1. tit. 1. 7

1st Prætor
387

2d Prætor,
or Prætor
Peregrinus
508

Jus Honorarium, another species of law, was so called because founded upon the edicts of magistrates *qui honores gerebant*. It first proceeded from the custom of the *Prætors*,⁵ who when they entered upon office, published and exhibited in the forum certain forms and rules by which they intended to administer justice; these were known by the title of *Leges Annuæ*; but if (as it sometimes happened) they were transferred from one magi-

4 It was to counteract this growing evil that the Emperor THEODOSIUS framed that title in his code *De responsis prudentum*." (Cod. Theod. Lib. 1. tit. 4. edit. Gothofred. 1665.) and was also JUSTINIAN's object in the title of his code *De veteri jure enucleando*. Lib. 1. tit. 17. Upon the subject consult JAC. RÆVARDUS *de auctoritate prudentum*, especially cap. 14, 15, & 16.

5 "Confluentibus ad urbem exteris, increbrescebant in diem "peregrina negotia; quibus expediendis cum *Prætor Urbanus* "minime sufficeret, creatus fuit, *Prætor alter*, qui *jus redderet* "inter *cives et peregrinos*, unde duplex erat in urbe jurisdictio "prætoria; majorem autem et potestate et dignitate urbanam "peregrinâ fuisse multis ex antiquitatis vestigiis elucet." Grav. *De ortu*, &c. cap. 35.

strate

strate to another, they were called *A. U. C.*
Edicta translatitia. It was not un-
 usual for the Prætors to swerve
 from their own edicts, till a law
 was passed which rendered them
 perpetual, and obliged them to ad-
 here to their first established rules.⁶
 From that time the prætorian edicts
 acquired consistency and influence
 under the title of *Jus Prætorium*,
 and were illustrated with comments
 and interpretations by the ablest
 lawyers in the time of Cicero.⁷ [D]
 It is to be observed, that under the
 general denomination of *Jus hono-*
rarium were ranked all the edicts
 and forms prescribed by the Con-

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Jus
Prætorium

6 Proposed by C. Cornelius, tribune of the people, and frequently called "Lex Annua," to distinguish it from the perpetual edict of Adrian. CICERO *in verrem*. Lib. 3.

7 The *Jus Prætorium* is described by Papinian to be "Quod Prætores introduxerunt *adjuvandi*, vel *supplendi*, vel *corrigendi* juris civilis gratiâ propter utilitatem publicam." And Cicero draws its character in the following passage "Con-suetudinis jus esse putatur id quod *voluntate omnium sine lege vetustas* comprobavit. In eâ autem *jura* sunt quædam ipsa jam certa propter *vetustatem*: quo in genere et alia sunt multa et eorum *multo maxima pars*, quæ prætores edicere consueverunt." De Invent. Lib. 2. cap. 22.

fuls,

A. U. C. fult, Censors, Quæstors, Tribunes, Dictators and Ædiles, both curule and plebeian, during the term of their several administrations. But none of these acquired the title of *Jus civile scriptum*, differing from it in the same manner as *Common Law* from *Equity*.⁸

Legis
Actiones

Legis, or *Legitimæ Actiones*, were forms of process in conducting any forensic business, "quasi commercii forensis instrumenta," and resemble the custom and mode observed in our courts when the parties join issue.⁹ The Pontifical College had the sole conduct of

⁸ GRAVINA, *De ortu*, &c. cap. 35 & 36.

⁹ STRUVIUS tells us "Legis Actiones sunt de iis, quæ eâ lege comprehensa erant certæ et statæ quædam atque solennes formulæ a prudentibus compositi." Syntag. Juris. p. 36. And HEINECCIUS calls them "Certi exercendi juris ritus, certæque verborum conceptiones et formulæ, quibus neglectis, susceptum quodvis civile negotium irritum habebatur." *Proem. Antiquit. Roman. Jurisprudentiam illustrantium*.

It is to these perplexed forms of juridical language that Cicero alludes, when writing to Atticus he says "Et quod ad te de decem legatis scripsi, parum intellexti; credo quia diu scripsi." Ad Attic. Lib. 13. Ep. 32. And again more plainly in another work "Ita et tibi Juris consultus ipse per

these matters, and by keeping the mysteries of the law confined to their own body and a few patrician families, they were looked up to by the people as oracles. Appius Claudius at last having, as some pretend, digested the confused mass of the *Legitimæ Actiones* into order for his own satisfaction, his secretary, Cneius Flavius, secretly procured a copy of them, and exposed them to public observation in the forum. "Clam jus civile, says FORSTER, in pontificum penetralibus repositum furatus est et evulgavit." These tables not only explained the juridical forms, but prescribed the terms also, or *dies*

Jus civile
Flavianum

449

*gnarus Flavius scriba ejus,
libertini filius subreptum
librum populo tradidit.
Dig. l. i. de e. 257.*

"per se nihil nisi leguleius quidam cautus et acutus, *præco actionum, cantor formularum, auceps Syllabarum.*" De Oratore, Lib. i. In the Oration for Muræna he is very full on this topic and contemptuously asks "Dignitas in tam tenui scientia quæ potest esse? res enim sunt parvæ, prope in singulis literis atque in interpunctionibus verborum occupatæ."

1 Cicero, in the Oration just quoted, is very severe upon the affected, mysterious air, which the ancient lawyers adopted in their pleading, and says, in allusion no doubt to the publications of Flavius and Ælian, "Ineptiis fucata sunt omnia,

C

"quæ

A. U. C. *fasti*, the days of pleading in the courts of justice. This gave, we are told, no small offence to the great families in Rome, whose dignity was considered as lessened by this communication; they accordingly introduced new forms and ceremonies into the law, still more mysterious than the former; these however were, after a few years, collected by Caius Ælius, who following the example of Flavius, published a second formulary; and many subsequent publications of this sort are to be met with in the Digest. “Atque hæc juris civilis
 “portio, nempe *jus civile Flavianum*
 “*et Ælianum*, itemque *interpretationes prudentum* proditæ e re
 “nata quas *fori disputationem* ap-
 “pellarunt sub *priscae jurispruden-*
 “*tiae nomine comprehenduntur.*”

Jus civile
 Ælianum

553

“quæ dum erant occulta, necessario ab iis, qui ea tenebant
 “petebantur; postea vero pervulgata, atque in manibus jac-
 “tata et excussa, inanissima prudentiæ reperta sunt; fraudis
 “autem et stultitiæ plenissima.”

2 GRAV. *De ortu*, &c. cap. 33. Neither of these works is extant, but a very ample collection of juridical forms may be
 seen

Another species of law belonging to the Romans was *Jus Pontificium*, or ecclesiastic law, called also *Jus sacrum*, *Jus pontificiale*, *Jus religionis*, and distinguishable from *Jus legitimum*, or temporal law. The exercise of it resided in the pontiffs, or college of ecclesiastical judges, instituted by Numa, and consisting originally of four members, to whom were afterwards added four more, and seven in addition to these by Sylla, which last however were distinguished from the original number by the inferior title of *Pontifices minores*. At the head of this college was the *Pontifex maximus*, a title and office which the emperors themselves thought it an honour to be invested with,³ and it accordingly

A. U. C.

^{Jus}
Pontificium

453--672

seen in BRISSONIUS's book *De formulis et solennibus populi romani verbis*. Where also the reader will find particular information respecting the religious, military, and domestic ceremonies of ancient Rome.

3 "Sane majorum hæc erat consuetudo ut rex esset etiam sacerdos vel pontifex; unde hodieque imperatores dicimus pontifices." SERVIVS ad *Æneid.* Lib. 3. v. 268.

C 2

appears

A. U. C. appears that for many centuries they enjoyed the supremacy in all civil as well as religious matters.[E] Their business related principally to adoptions, marriages, testamentary and sepulchral offices, oaths, vows, consecrations, digesting the annals, regulating the calendar, appointing *dies fasti et nefasti*, and prescribing the rules and forms of juridical proceedings.⁴

Such then were the various parts of which the Roman law appears to have been composed during the age of the *commonwealth*; such also was the *character* of each distinct part and the *order of time* in which it successively grew out of the *fundamental* code of the XII tables.

I cannot perhaps close the foregoing account better than in the words of POMPONIUS, who concludes the first part of his *En-*

⁴ The fullest information upon this subject may be gathered from JAC. GUTHERIUS *de veteri jure pontificio* and ANDREA BOSIUS *de pontificatu maximo imperatorum romanorum*, both in the 5th vol. of GRÆVIUS. See also the second book of CICERO *de legibus*.

chiridion (which treats *De origine juris*) with the following recapitulation.

“ Ita in civitate nostrâ aut *jure* id est, LEGE
 “ constituitur, aut est proprium JUS CIVILE,
 “ quod *sine* scripto in solâ PRUDENTUM IN-
 “ TERPRETATIONE consistit, aut sunt LEGIS
 “ ACTIONES, quæ *formam agendi* continent,
 “ aut PLEBISCITUM quod *sine auctoritate pa-*
 “ *trum* est constitutum aut est *Magistratum*
 “ *edictum* unde JUS HONORARIUM nascitur,
 “ aut SENATUS CONSULTUM quod *solum se-*
 “ *natu constituyente* inducitur.”⁵

The following table, in which these laws are arranged in their natural order, may perhaps convey a clearer idea of the subject than could be obtained by any other mode of distribution.

5 Dig. Lib. 1. tit. 2.

JUS

JUS SCRIPTUM

*Jus legitimu*⁶—vel *publicum*—*Jus sacrum* vel
Pontificium

Leges

Jus civile Papyrianum—*XII Tabulæ*

Senatus consulta—*Plebiscita*

JUS NON SCRIPTUM

Fori disputationes—*Responsa prudentum*

Legis Actiones

Jus civile Flavianum—*Jus civile Ælianum*

*Jus Honorarium*⁷

Jus Prætorium—*Leges Censoriæ*—*Ædilitiæ*

6 It is not without authority that I have distinguished the *temporal* from the *ecclesiastic* law of the Romans, by the word *legitimum*. CICERO says, “et *legitimo* et *pontificio* jure quærat.” *Pro Domo*, §. 14. And again, in the same Oration, “*Perturbatis sacris*, jure *quiritum legitimo* tutelarum et hæreditatum” *relieto*, factus es ejus filius contra fas.”

7 By some writers a distribution of a different kind has been adopted, in which the *Responsa* and the *Jus Honorarium* are ranked under JUS SCRIPTUM; but the arrangement I have chosen, seems justified by the DIGEST. Lib. 1. tit. 2. wherein they are placed under the head of “Jus quod *sine scripto* venit,” the rank they certainly held till Augustus increased their authority.

From

From these sources proceeded all those salutary laws which were upon various occasions enacted by the different magistrates of the state; and those beneficial regulations by which both the religious and civil rights of every Roman citizen were for many ages inviolably maintained. It does not enter into the plan of this Epitome to speak at large on these particular laws, and a bare enumeration of their titles would answer no useful purpose whatever. I therefore refer the reader who wishes for information on this head to some excellent writers upon the subject, in the 1st and 2d Vol. of GRÆVIUS's *collection of Roman antiquities*, to the 3d book of GRAVINA's *Origines juris civilis*, "de legibus et Senatus-consultis," and to ERNESTI's *index legum* prefixed to his *Clavis Ciceroniana*.⁸ It may not however be amiss to mention a general distribution which AUGUSTINUS in his book on the Roman laws lays down to faci-

8 A catalogue of those modern writers, who with a laudable industry have collected together the fragments of many particular laws, and by their extensive comments upon them have illustrated various interesting points of Roman antiquities, may be seen in DR. TAYLOR's *Elements of civil law*. Art. Lex. p. 196.

litate the knowledge of this intricate subject. He thinks the whole mass of laws may be referred to some one of the following classes.

“ Aut enim—1. ad sacras res pertinent—
 “ 2. Aut ad magistratus—3. Aut de comitiis
 “ —4. De indiciis—5. De aliis rebus civi-
 “ libus latæ sunt—6. Aut ad mores—7. Ad
 “ omnium hominum crimina—8. Ad sedi-
 “ tiosos legiflatores—9. Ad rem militarem
 “ ſpectant.” *De legibus. Cap. 5.*

To theſe ages of independence, in ancient Rome, ſucceeded a government of a ſome-what different complexion under the Emperors. The ſyſtem of jurisprudence, which prevailed during the commonwealth, neceſſarily received ſome alterations. Theſe I ſhall now proceed to conſider in as regular chronological order as the ſubject will permit.

A. U. C. Some are of opinion, that upon the acceſſion of Auguſtus, every other legiſlative power in the ſtate was abſorbed in the will of the emperor, and that the *Lex regia* took place of every other ſpecies of law.

law. The fact appears to be thus; A. U. C. Augustus did at different times receive certain grants of public administration from the hands of the senate and people; by the last of which he became completely invested with all civil power;⁹ though indeed he was eight years before this last grant, *Sovereign* in the truest sense of the word, declared AUGUSTUS, and *Legibus solutus*. [F]

The power thus gradually conferred upon this prince, was bestowed *at once* upon his successors by a public decree, which, though it did not obtain the title of *Lex regia* till the age of the Antonines,

9 A. U. C. 725—727—730—735. GRAVINA speaking of Tribonian's preface to the Digests, where, in the person of Justinian, he first introduces this notion of the *Lex Regia* "Cum enim lege antiquâ, quæ regia nuncupabatur omne jus, omnisque potestas populi Romani in imperatoriam translata sit potestatem" adds, that what the ambitious struggles of Cæsar and Pompey, the perfidy of the Triumvirate, the violence of the legions and the unrestrained insolence of the Prætorian cohorts could never bring to pass, the abuse and wilful misinterpretation of the *Lex Regia* effected; namely, the total subversion of civil liberty. Lib. *de imp. rom.* cap. 23, 24.

D

appears

A. U. C. appears nevertheless to have merit.
 725--766 ed that appellation on its first establishment.¹ There are others who contend that this instrument was far from conferring absolute power upon the emperor; that *Legibus solutus* can only mean a partial exemption, and that if ever the *Lex regia* can be taken in a despotic sense, it must be when the seat of empire was removed, and the servile spirit of the Greeks was ready to encourage the boldest strides of imperial encroachment.² Which of these two opinions may be right, it is not now easy to determine, and whatever may have been its

¹ *At Romæ, senatus cuncta principibus solita Vespasiano decernit.* Tacit. Hist. Lib. 4. cap. 3. A fragment of a decree of the senate, which confirmed Vespasian in the full possession of imperial power, was found in the last century, engraven upon copper, in the church of St. John de Lateran at Rome. TAYLOR's *Elements of Civil Law*. art. *Lex Regia*. GRUTER's *inscriptions*, CCXLII.

² When, as GRAVINA expresses it, the Senate was rather the *retinue* of the prince, than a necessary portion of the government, "*Constantinopolitanum Senatum potius Pompam principis, quam reipublicæ Romanæ portionem reputemus.*" *Lib. singularis de romano imperio*. cap. 45.

original character, from the follow- A. U. C.
ing description of the *Lex regia* in 725--766
the institutes, its meaning and ten-
dency at that time cannot I think,
be well misunderstood. "Sed et
"quod *principi placuit*,³ legis habet
"vigorem, quum *Lex regia* quæ
"de ejus imperio lata est, *populus*
"ei et in eum omne imperium suum et
"potestatem concedat."⁴

Soon after the establishment of
the imperial power, two sources of
the original legislation at Rome,
namely, *Leges* and *Plebiscita*, were
abolished, and another species of
law arose under the title of *Impe-*

3 "Tel est notre plaisir" in the mouth of a French king.
Though BRACON paraphrases it "Non quicquid de volun-
tate regis temere præsumptum est, sed quod consilio magis-
tratum suorum rege auctoritatem præstante et habitâ super
hoc deliberatione et tractatu, recte fuerit definitum." *De ac-
tionibus*, Lib. 3. cap. 9.

4 GERARD NOODT, a very celebrated professor of civil law
at Leyden, at the latter end of the last century, has written
a treatise *De jure summi imperii et de lege regia* which has been
translated by BARBEYRAC with some admirable notes, and to-
gether with his translation of a dissertation by GRONOVIVS in
the same volume, will be found to afford every possible in-
formation upon the subject.

A. U. C. *rial Constitutions.* Of these there 725--766 are three separate species, *Epistolæ* — *Decreta* — *Edicta*; though the refinement of some civilians has created many other unnecessary distinctions on this head.

The most striking difference in their general character seems to be, that the *Epistolæ* and *Decreta* were made laws at the solicitation of others; whereas the *Edicta* were conceived and executed most frequently, as it is expressed *ex mero motu imperatoris*.

To speak more particularly of each; *Epistolæ* were sent in answer to such as requested a decision upon any point of law or matter of controversy, and the opinion therein given continued to be decisive for the future, either generally or specially, according to the nature of the dispute.

5 *Epistolæ* were sometimes called *rescripta*, and the petitions to which they referred are known under the title of *Libelli Supplices*.

The emperors in their answers were usually regulated either by the opinion of some able counsellor, or by established

Decreta were the opinions and A. U. C. decisions of the emperors, when 725--766 they sat (as was customary with *Decreta* many of them) to hear causes in the courts of justice.⁶

Edicta were voluntary and occasional proclamations made for some general purpose, whenever it was thought requisite by the emperor; and they were considered as universal law under the title *Lex edictalis*. *Edicta*

There is also another species of imperial law called *Orationes*. These *Orationes* were speeches made in the senate, either by the emperor himself or by his *Quæstor*, who on this occasion is sometimes called *Os imperatoris*, *Thesaurus publicæ famæ*, *Armarium legum*.⁷

blished precedents of law. The Rescripts of the emperor *Severus* are very celebrated, and many of them are to be seen in the 12th vol. of *FABRICIUS's Bibliotheca Græca*. p. 514.

6 Paulus compiled six books of imperial decrees; principally those of the Antonines and of Severus.

7 *CASSIODORUS*, lib. 6. ep. 5. At what precise period this part of the *Quæstor's* office took place we have no certain evidence. The accounts we meet with are very contradictory: some writers fix it in the reign of *Vespasian*, upon the authority

A. U. C. We read also in the Theodosian 725--766 code of *Pragmatica*, divided into *Pragmatica* *Jussiones* and *Sanctiones*, the first of which commanded, the last pro-

perty of AURELIUS VICTOR, who, in his life of *Vitellius* (Vespasian's immediate predecessor) says, he was the last emperor that recited his oration to the senate in person. But SUTTONIUS tells us expressly that the *Quæstor* was employed in this business as early as the reign of Augustus. Vit. Aug. §. 65. "If (says CICERO) it be necessary for a common orator to speak with dignity and elegance in order to influence the minds of his hearers, how much more do we require in him who is, as it were, the mouth of the prince, *Os principis*?" A title which we know was applied to the *Quæstor*, in allusion to the custom of which we are speaking.

But the *Quæstor* appears not only to have been employed to deliver the emperor's sentiments to the senate, he had frequently the charge of *composing* the oration also; and TACITUS records *Nero* as the first who ever entrusted his *Quæstor* with this commission. In how honourable a light this part of the duty was regarded we may infer from many circumstances: *Titus*, we are told, executed it under his father Vespasian, (SUTTON in vit. Tit. cap. 6.) as did *Adrian* for his uncle Trajan. SPARTIAN. in *Adrian*. cap. 2. BRISSONIUS is of opinion that the office extended still farther, and that every species of communication between the prince and the senate was occasionally carried on by the *Quæstor*. He observes also upon the words *Jura orationibus principum constituta*, which frequently occur in the law books, that this was said because the oration, and the decree of the senate consequent upon it, were usually annexed

hibited the execution of certain A. U. C. subjects of petition from the provinces, cities and collegiate bodies in the empire. 725--766

Another instrument of imperial authority, occurs under the title of *Mandata*, or directions sent to the governors of towns and provinces for the regulation of their peculiar districts. All these different species of law may however be reduced to three general heads already mentioned, namely, *Epistolæ*—*Decreta*—*Edicta*.

These Imperial Constitutions were usually framed by the emperor in his *Consistory*, a kind of privy council, established by Augustus, and composed first of fifteen and afterwards of twenty members of the senate, chosen by lot, together with some eminent magistrates

annexed to each other, and used as synonymous terms. *Select. ex jur. civ. antiq.* Lib. 1. cap. 16. In GRUTER's inscriptions, Tab. 502. there is a copy from an original oration of *Claudius*, "De supplendo senatu ex nationibus exteris," still preserved at Lyons. See also COD. JUSTINIAN. Lib. 1. tit. 30. *De officio Quaestoris*.

and

A. U. C. and lawyers. Their business originally was to discuss such matters as required dispatch, or were of too trifling a nature to come before the Senate. But the *Consistory* at last extended its jurisdiction; and at the death of Augustus was become a substitute for the Senate in affairs of the most general importance.⁸

Thus under the *Emperors* we see that the IMPERIAL CONSTITUTIONS took place of the *Leges* and *Plebiscita*, and that the Senate was in some measure superseded by the CONSISTORY; in other respects the sources of the Roman law will be found the same as under the *consular* government.

8 “Augustus decretis suis perpetuam firmitatem comparaturus impetravit, ut generali SC^{to} potestas judicialis et publica Senatus universi transferretur in consilium illud principis: quod ab eo tempore S. C. condendi facultatem accepit.” GRAV. Lib. de romano imperio, cap. 17. This is something analogous to LORD BACON’s idea of the *privy council* in his time, “which had, he says, not a delegated but an inherent authority, and the king being there, in *Cathedra*, his decrees in all matters, whether general or particular, were settled and irrevocable.” See his speech for persuading the House of Commons to receive the king’s messages by their speaker, &c.

The

The *Responsa prudentum*, which A. U. C. heretofore had no other authority 725--766 in the courts of justice, but what they derived from their own inherent excellence, were rendered more generally decisive by Augustus, who permitted them even to controul the decisions of the magistrates, and to be considered in future as oracles of law. But this latitude was granted only to the opinions of those lawyers whom the emperor should think fit to nominate,⁹ and who

9 "Primus Augustus publicam juris-consultis tribuit auctoritatem, jussitque ut *respondendi facultas* non amplius *e privato consilio*, sed *ex principis beneficio* prodiret." GRAVINA *de ortu*, &c. cap. 42.

The *Responsa Prudentum* from this time ranked as *Jus scriptum*, though the degree of authority which they received from Augustus has been much disputed by some writers, who pretend that this emperor only permitted them to be law in the particular case to which they should be applied, and that they were not considered as general precedents till the time of Justinian: but this seems to be confuted in an instance of their authority given by Justinian himself, who tells us that Augustus having called together some of the most eminent lawyers, consulted them concerning the legality of codicils, and upon their opinion solely established the use of them, "Post quæ tempora nemini *dubium erat quin Codicilli jure optimo admitterentur.*" §. 1. *instit. de Codicillis.*

E

from

A. U. C. from this privilege are distinguished 725--766 ed both in the Digests and the Code, by the appellations of *Juris auctores* and *Juris conditores*, titles which they never before had presumed to adopt.

Sabinians
and
Proculeians

When legal opinions became so highly respectable, a variety of controversies arose, which in a short time divided the professors of the law into sects and parties. Two of these, more famous than the rest, were known by the names of *Sabinians* and *Proculeians*. The former called after MASURIUS SABINUS, and having at its head *Atteius Capito*, professed to adhere to the strict text of the ancient law, and to oppose all glosses and innovations whatever.¹ *Antistius Labeo* was the leader of the other sect, which received its name from PROCULUS, an eminent teacher of law. His tenets were directly opposite to those of the Sabinian school; for he ad-

¹ " *Atteius Capito* quæ a majoribus tradita fuerant constantius tenebat et verbis atque institutis hærebat firmitus." GRAVINA *de ortu*, &c. cap. 45.

mitted

mitted of great latitude in interpretation and commentary: this gave room for a variety of conceits, and rendered the practise and opinions of his followers very undefined.² These two sects continued to flourish till the reign of Antoninus Pius, when a set of mediators appeared; yet their interposition was not quite effectual, and the disputes (though with less violence) were at intervals continued almost to the days of Constantine.³

2 “*Labeo mentis quodam ardore sublatuſ indulgebat ingenio, innixuſque propriæ ſapientiæ, ſibiſque amplius permit- tens provehebatur in altum et novitate ducebatur. Itaque plura intulit, vel ignota vel intentata veteribuſ.*” GRAVINA, loc. cit. As a beautiful illustration of GRAVINA’s chapter *De juris-consultorum ſectis*, I refer my reader to MASCOVIUS’s treatiſe *De ſectis in jure civili*, edit. Lipſ. 1728. LAMBECIUS in the Appendix to his *Prodromuſ hiſtoriæ literariæ* haſ drawn out a table of theſe two ſects as they ſpread, till the age of Adrian. p. 232. edit. Fabricii, 1710.

3 “*Hujus diſcordiæ plura veſtigia ſuperſunt in libris juris; multasque retinemuſ reliquias conſiſtantium inter ſe ſcriptorum, quas Tribonianuſ ſatiſ cavere non potuit quamvis Juſtinianuſ miram locorum concordiam polliceatur.*” GRAV. loc. cit.

From the foregoing detail it appears that out of the laws of the XII Tables had arisen a confused and variegated mass of jurisprudence; which, having never been properly reduced under any regular system, had rendered the study of the law extremely irksome and laborious. This confusion was considerably increased by these contending sects, whose whole endeavour it seems to have been to load a science, already too much encumbered, with unnecessary difficulties, and to perplex it with sophistical and often contradictory definitions. To the *Responsa Prudentum* these disputes were particularly injurious, and were the cause that soon after the death of Augustus the authority of this branch of law was considerably diminished: indeed, under the emperor CALIGULA, it may be supposed to have received an effectual check, for he publickly declared “Se mehercule effecturum ne quid respondere possent præter eum.”⁴ Which seems to confine the right of delivering juridical opinions to the emperors only. The *Responsa* however recovered their original splendor from the reforming hand of the emperor ADRIAN, who, as we find in

⁴ SUTTON. in vit. Calig. c. 34.

the

the Digest, decreed “ Ut si quis fiduciam sui
“ haberet delectari se, populo *ad responden-*
“ *dum* se præpararet.”⁵ The constitutions of
THEODOSIUS and afterwards of JUSTINIAN
completely established their authority.⁶

During the latter ages of the republic
many fruitless or imperfect attempts had been
made to remedy the great inconvenience
which arose from the prodigious increase of
the Roman laws, and many projects were
formed for throwing the science into some
clear, well-digested arrangement; for re-
trenching what was superfluous and elucidat-
ing what was obscure. It was reserved for
the EMPEROR JUSTINIAN to accomplish
this noble and useful work; and in his ad-
mirable compilation to transmit to future
ages a model of legislative wisdom.

Having now treated of all the various spe-
cies of laws, as they were *separately* received,
either in *consular* or *imperial* Rome, I shall
next proceed to consider the subject in its
collective form, and shall endeavour distinctly

5 Lib. 1. tit. 2. l. 2.

6 The classical reader will find many elegant observations
upon the *Responsa Prudentum* in DR. TAYLOR's *Elements*,
p. 219, et seq.

to mark the particular changes which took place in Roman jurisprudence, at each stage of reformation, till the period of its final extinction.

And here it may not be amiss previously to mention that many civilians (though they disagree with respect to the mode of dividing the subject) have been fond of adopting a general distinction of the Roman civil law into the three following periods, namely, *Jurisprudencia Antiqua*, *Media* and *Nova*. The first has usually been considered as the state and complexion of jurisprudence, *from the foundation of Rome, to the æra of the XII Tables*. The second, as the period *between the æra of the XII Tables and the reign of the emperor ADRIAN*, when the imperial constitutions took place of all other law “*radiabant solummodo Imperiales Constitutiones*,” and when the third period or *Jurisprudencia nova* commenced and *continued to the age of JUSTINIAN*. GRAVINA differs very materially from most others in adopting *four* periods.—*Jurisprudencia Antiqua from the XII Tables to the age of CICERO*.⁷—*Jurisprudencia Media*

7 “*Aspera quidem illa tenebricosa et tristis non tam in æquitate quam in verborum superstitione fundata.*” GRAV. *De ortu*, &c. c. 46,

from

from the time of CICERO till the reign of AUGUSTUS,⁸ when Jurisprudentia Nova arose, and continued to JUSTINIAN's reformation, and then made way for the last period, or Jurisprudentia novissima, under which title he considers the Roman law, from the death of JUSTINIAN till the expiration of the Exarchate of Ravenna, A. D. 752. "A quo tempore, Jurisprudentia, barbarorum colluvie merfa, usque ad LOTHARIUM, A. D. 1134. latuit in Italiâ."⁹

The compilations of Sextus Pa- A. D.¹
pyrius, of Flavius and Ælius, have already been mentioned. The attempts which we are told were made by Pompey, Julius Cæsar²

8 "Quæ magis communi utilitate quàm potestate verborum negotia moderaretur ductaque interpretum ac magistratuum auctoritate, leges veteres flecteret ad lenitatem," loc. cit. The utmost extent (according to GRAVINA's division) of the *Jurisprudentia media* will not be much more than a century, if we reckon from the birth of Cicero, 107 years before Christ, to the death of Augustus A. D. 15. This short but interesting period may justly be stiled the *golden age* of jurisprudence.

9 GRAV. *De ortu*, &c. cap. 46.

1 Agreeable to general custom I shall, in the remaining part of this Chronology, adopt the Christian Æra, the first year of which answers to the year of Rome 751.

2 SÆTONIUS tells us of Julius Cæsar "Statuerat jus civile ad certum modum redigere atque ex immensâ diffusâque le-
" gum

A. D. and Cicero³ towards compiling and arranging this overgrown science, were from unfortunate concurrences of the times rendered ineffectual; and the trouble which Vespasian took in collecting the *Leges* and *Senatus-consulta* was (as DR. TAYLOR justly observes) rather that of an antiquary than a lawyer. It was not in short till the reign of ADRIAN, that any further compilation was made.⁴ Under this emperor, JULIAN, a lawyer of high consideration in the empire, of the

Perpetual
Edict.
120

“gum copiâ, optima quæque et necessaria in paucissimos con-
“ferre libros,” cap. 44. a very exact description of what JUSTINIAN afterwards effected.

3 AULUS GELLIUS speaking of a particular application of the word *supersse*, quotes a passage from a book of Cicero, “Qui inscriptus est, *de jure civili in artem redigendo*.” *Noct. Attic. Lib. 1. cap. 22.*

4 ADRIAN’s affected imitation of the character of NUMA as delineated in the sixth *Æneid*, is generally known; and DODWELL seems with great ingenuity to prove, that the wish of being considered, like that king, an *original legislator* is the true cause why we are deprived of the imperial laws of all this emperor’s predecessors. See HEN. DODWELL’s *Prælectiones Academicæ*, delivered from the Cambden professor’s chair, of ancient history, in this university. *Prælect. 7, 8, 9.*

Sabinian

Sabinian sect, made a collection of *Prætor's Edicts*, and adding to them some other parts of the *Jus honorarium*, digested the whole into a regular series and system of law in fifty books. This compilation was held in high veneration, and was regarded as a standard of juridical reference till the age of Constantine, when among the other new arrangements and institutions which took place in the government of the empire, the laws did not escape the general spirit of innovation and *the perpetual Edict* lost much of its authority.⁵

5 It may be asked, says GOTHOFRED, how it happened that the Code of Hermogenes commences no higher than the reign of Adrian. "Putem ego quod Adrianus novæ cujusdam Jurisprudentiæ Author extiterit condito inter alia *Edicto perpetuo* cujus materia ordoque deinceps pro Cynosurâ archetypi juris fuere, quod nobilissimum fuit corpus juris Romani et universæ jurisprudentiæ quæ nobis relicta est caput." *In prolegomena cod. Theodos.* cap. 1. The *EDICT* is extant only in fragments collected out of various parts of the Digests, and thrown together in as regular order as such scanty materials would admit of, by various editors of the Theodosian and Justinianean laws; especially by J. GOTHOFRED in his *Quatuor fontes juris civilis*, and by SIMON VAN LEEUWEN at the head of the Digests, in his noble edition of DION. GOTHOFRED's *Corpus Juris Civilis*. Lugd. Batav. 1663.

F

The

A. D.
Codex
Papyrianus
223

The earliest compilation of Imperial Constitutions is by some attributed to Papyrius Justus, who in the reign of Severus is said to have published the constitutions of Verus, Antonine, and the two Severus's, in twenty books, which are mentioned under his name in the list of lawyers at the head of the Pandects.⁶

306
Codex
Gregorianus

To this succeeded two compilations of the age of CONSTANTINE THE GREAT.

The first is a collection of imperial Constitutions from Adrian 138--284 to Diocletian, including a space of about an hundred and fifty years, the work of GREGORIUS, or as some call him, GREGORIANUS, Prætorian Præfect to Constantine. The other was a continuation of this code by his cotemporary, HERMOGENES, who brought it

Codex
Hermogenianus

⁶ A Catalogue of the titles of these laws is to be found in JAC. LABITTI *Index legum omnium quæ in Pandectis continentur.* p. 268.

down

down to Constantine's reign.⁷ As A. D. neither of these works were ever 284--306 allowed to have any general authority, they fell entirely into disuse (except in the schools) about a century afterward, upon the publication of the THEODOSIAN CODE.⁸

Previous to this event, it is necessary to observe, that the emperor VALENTINIAN the third, perceiving the corruptions which had crept into the Roman law, not only from the promiscuous admission of all descriptions of men into that

7 "In Codice Justiniano constitutiones quædam occurrunt post Diocletianum scriptæ et anteriores tamen epocha Codicis Theodosiani. Hæ quum ex Codice Theodosiano desumptæ non sint, procul dubio ex alterutro horum codicum (Gregoriani scilicet aut Hermogeniani) in corpus Justinianum migrarunt. Adeoque probabile est, Hermogenianum Codicem pertigisse ad Annum 306." HEINECCI *antiq. roman. Jurisp. illustran.* p. 19.

8 The diligence of CUJACIUS has preserved us some fragments of these two codes: and his labours have been improved upon by SCHULTINGIUS in his *Jurisprudentia vetus ante Justinianæ*. P. 681—718.

A. D. 426 profession,⁹ but from the indigested state in which the writings and opinions of the old civilians then appeared, sent a pressing oration from Ravenna¹ to the Roman senate, wherein he attempts to reform the first evil, by clearing the public tribunals of that multitude of pleaders and assessors with which they were infested, and to remove the last, by cautiously separating the works of the most eminent lawyers from the general mass, and establishing them under imperial sanction as the only works of juridical authority and precedent for the future.²

⁹ "Juris civilis Scientia, quæ Manlios, Scævolas, Servios in amplissimum gradum dignitatis extulerat, libertorum artificio dicebatur." MAMERTINUS *in grat. act. pro consulatu*.

¹ HONORIUS had transferred the seat of empire to Ravenna about 23 years before, and it continued to be the residence of the emperors, the Gothic kings, and the Exarchs, for more than three centuries.

² The substance of this Oration is to be seen in the THEODOSIAN CODE, Lib. 1. tit. 4. *De responsis Prudentum*, and in JUSTINIAN'S CODE, Lib. 1. tit. 14. *De legibus*.

The

The THEODOSIAN CODE was completed under the direction of the younger Theodosius, by eight of the most celebrated civilians of those times, whose names are mentioned in the first Novel of this emperor. It contains a collection of Imperial Constitutions, from Constantine to his own age, in sixteen books.³

A. D.
Codex
Theodosia-
nus
435
or according
to Gothofred
438

In the east, its authority was confirmed by a Novel Constitution, directed immediately upon its publication to Florentius, Prætorian Præfect in that part of the empire, having for its title *De Theodosiani Codicis Auctoritate*, and enacting that no Imperial Constitutions whatever, except such as were contained in that compilation, were thenceforward to be regarded as

3 "THEODOSIUS MINOR leges ad similitudinem *Gregoriani* et *Hermogeniani*, Codice facto Constitutionum a Constantini temporibus sub proprio cujusque titulo disposuit, quem a suo nomine *Theodosianum* vocavit. GOTHOFRID, *prolegom. Cod. Theod.* Cap. 1.

A. D. 438 valid.⁴ The good understanding which subsisted between Valentinian and Theodosius, established the authority of this Code in the west also.⁵ The former indeed, as appears, contributed to the collecting of it by very liberal communications.

It is undoubtedly to its favourable reception in the western empire that this work is extant in so complete a state; for it was in a great measure superseded about ninety years afterward in the east by JUSTINIAN's compilation.⁶[G]

4 A late historian observes, that the clause in this Novel which confines the authority of all future laws to that division of the empire in which they shall be enacted (except when voluntary adopted by the other) may be considered as an act which conduced more than any other to the final dissolution of the *unity* of the Roman government. GIBBON's *decline and fall of the Roman empire*. Vol. 3. chap. 33.

5 In many of the Novel Constitutions, published by these emperors, they exchange the names of father and son; and Valentinian frequently declares, that the greatest sanction his laws could have, is that they are inserted in Theodosius's Code. See *Novell.* 10. 13, &c.

6 The Theodosian Code was first published by J. SICARDUS, at Basil, in the year 1528, who added, besides the Novel

Con-

It appears then, that upon the regulations made by the two emperors, THEODOSIUS and VALENTINIAN, the state of the Roman law in both parts of the empire was nearly as follows. The THEODOSIAN CODE took place of every other in point of public authority; yet in the three Academies of *Rome*, *Berytus*, and *Constantinople*, the works of *Gregorius* and *Hermogenes*, in consideration of their intrinsic merit, were permitted to be studied. [H] In the courts of justice the pleadings and decisions were regulated by the writings of those lawyers, whom VALENTINIAN in his Oration had selected as the most worthy such distinction. These were, in the first rank, PAPIAN, PAULUS, CAIUS, ULPIAN, and MODESTINUS: [I] and to these were added some of the older civilians, whose opinions they had quoted in their works,

Constitutions of many succeeding emperors, two books of the *Institutes of Caius*, some fragments of the *Gregorian and Hermogenian Codes*, and the celebrated treatises of VOLUSIUS MÆCIANUS *De Offe*, and of FRONTINUS *De limitibus*. It was republished by J. DU TILLET, Bishop of Meaux, in 1550, and again by CUJACIUS in 1556. But it was reserved for the accuracy of JAC. GOTHOFRED to give a complete edition of this work, which (though he did not live to see it) was published in 1665, in 6 vols. folio, with learned prolegomena and an extensive commentary.

Scæ-

Scævola for instance, Sabinus, Julian and Marcellus; but among all these, the work which seems to have been in the highest estimation is the *Opinions* of PAULUS.⁷ For the preservation of these precious relicts of ancient wisdom, together with the Theodosian Code, we are principally indebted to the barbarous nations who over-ran the western empire; since either from a decided preference or for want of a complete copy of JUSTINIAN'S work, they adopted (though partially perhaps) that of THEODOSIUS. [K]

It is to this æra, the reign of the younger THEODOSIUS, that we are to ascribe that singular collection of law, which is known by the name of *Collectio Mosaicarum et Romanarum legum*, and which consists of a selection from the works of the most celebrated civilians (especially of Papinian, Paulus and Ulpian), of such of the Roman laws as from their great resemblance are supposed to have been derived from the *Mosaic* institutions, comprized in sixteen titles or chapters.

Various are the disputes concerning the compiler of this work. Some have attributed it to LICINIUS RUFINUS, a celebrated law-

⁷ A Collection of these opinions is to be found at the end of GOTHOFRED'S *Corpus juris civilis*. edit. Lugd. Batav. 1663.

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yer in the reign of *Alexander Severus*, and this opinion is favoured by the respectable authority of *Cujacius*, who says without hesitation (speaking of a certain controverted point) “Thus thought *Licinius Rufinus*, in “*eo libro quo contulit leges Dei cum legibus populi Romani*.”⁸ *PIERRE PITHOU*, and *MENAGE* in his *Amanitates juris civilis*⁹ both reject this opinion, and agree in ascribing it to some part of *Theodosius*’s reign subsequent to the publication of his Code, because that and the prior Codes of *Gregorius* and *Hermogenes* are referred to in this Collation, which could not have happened had the author lived in the time of *Alexander Severus*. *MARQUHARD FREHER* differs from each of these opinions, and ascribes it to some ambitious Jew of a still later period, who in order to magnify his sect in the eye of the emperor, drew up this comparative view of the Mosai- cal and Roman laws.¹

⁸ *Observationum*. Lib. 13. cap. 10. edit. Fabrotti, Paris, 1658.

⁹ cap. 7.

¹ *FREHER*. Παρεργων juris. Lib. 1. cap. 9. The first edition of the *Collectio Legum*, &c. was published by the learned *PIERRE PITHOU* or *PITHOEUS*, at *Paris*, ann. 1572. and was

A. D. From the death of the emperor
 455--490 Valentinian to the succession of
 Theodoric the Ostrogoth, the em-
 pire in the West continued to ex-
 hibit a scene of confusion very un-
 favourable to the regular admini-
 stration and progress of the laws:
 perhaps we ought to except the
 four years reign of Majorian, whose
 458--461 zeal to restore the splendour of the
 Roman name extended itself (tho'
 ineffectually) not only to the laws,

republished in a beautiful edition at the same place, ann. 1689,
 by F. DESMARE'S, together with PITHOU'S observations on
 JULIAN'S translation of Justinian's Code and Novels.

It was owing to the accurate diligence of PIERRE PITHOU and
 his brother FRANCIS, that many valuable portions of the Ro-
 man law were in the 16th century brought forth from the ob-
 scurity in which they had for ages been buried, and by their
 timely labours were rescued perhaps from oblivion. PIERRE
 was with great justice siled the *Varro of France*, and is seldom
 mentioned by any writers without some mark of reverence or
 affection. The great CUIACIUS says of him, among other en-
 comiums, "Hoc agente, hoc perquirente, instigante, docente
 "dicimus semper et adinvenimus aliquid." *Observ. Lib. 13.*
cap. 10. and in another place he pronounces him to be a man
 equally unrivalled in learning, diligence and social virtues.
De Feudis. Lib. 2. tit. 11.

but

but to the manners and public edifices also of this declining city.²

A. D.

A few years after his death, the Western Empire terminated with Momyllus, and Odoacer succeeded

476

to the supreme power in Italy. He had scarcely reigned fourteen years

490

when he was deposed by THEODORIC THE OSTROGOTH, who was

soon after proclaimed king of the Goths and Romans.³ The remarkable

attachment of this prince to

² *Novellæ Majorian.* Lib. 4. tit. 6.

“Imperium jam consul habet quem purpura non plus

“Quam lorica operit, cujus diademata frontem

“Non *luxu* sed *lege* tegunt.”

Is said by SIDONIUS of this emperor with more justice than is usual in this writer's panegyric. *Carmen.* 5. v. 1.

³ The laws and magistracies of Rome seem to have been entirely suspended during the first years of Odoacer; for SIGONIVS tells us that in the seventh year of his reign, as a great mark of favour, “*Odium adversus Romanos ita mitigavit ut* “*Consulem civitati atque occidenti reddiderit.*” *De occidentali imperio.* Lib. 15. p. 255. which is very opposite to the conduct of Theodoric, who, says the same writer, “*Nullum Romanum institutum mutavit, siquidem et senatum et consules,* “*patricios, cæterosque qui fuerant in imperio magistratus retinuit, eosque Romanis hominibus tantum mandavit.*” *U^t sup.* Lib. 16.

A. D. the laws and customs of Rome, during an illustrious reign of thirty eight years, has endeared his name to posterity. [L] His earliest care, after his accession, was to restore the civil regulations and government both of the city and provinces to their original form and dignity. For 493 this purpose he published an EDICT, by which he enjoined the use and practise of the Roman civil law in all cases of moment, both to his Roman and Gothic subjects, reserving however to the latter a power of deciding trivial disputes by their own laws and customs.⁴

Thus we see that notwithstanding the extinction of the Roman Empire in the west,

4 P. PITHOU first published this Edict in 154 chapters, and though some parts of it favor strongly of Gothic barbarism, yet upon the whole it may be said to breathe the mildness and equity of the Roman Codes. For a further insight into the administration and laws of Theodoric, consult the *five first books* of CASSIODORUS, which contain Epistles and Edicts of this emperor, directed upon various occasions to the different officers in the empire.

the

the venerable form of Jurisprudence and Civil Polity had hitherto escaped the general shock. To the body of law as it stood at the deaths of Theodosius and Valentinian were now added the *Novel Constitutions* of MARCIAN, MAJORIAN, SEVERUS, ANTHEMIUS, and the *Edict* of THEODORIC.

In the East, during the reigns of Marcian, Leo, Zeno and Anastasius, it had suffered no alteration; but the æra at last arrived in which the labours of all preceding compilers were to be eclipsed, and which (agreeably to the established course of all sublunary things) was to prove at once the meridian and the decline of Roman Law. It may be proper to premise that such a work as that of Justinian was now become absolutely necessary, from the great obscurity into which the writings of the ancient lawyers were fallen.

This had been heavily complained of in the preceding century; and AMMIANUS MARCELLINUS declares that the juridical books of ancient Rome were as little known to the practitioners of his day, as the laws of the *Sicani* and the *Aruncanians*, which were, as he expresses it, *cum Evandri matre abhinc sæculis obrutas multis.*

The

A. D.

The EMPEROR JUSTINIAN observing to what a bulk the science had encreased, and how confusedly its parts were thrown together, resolved to reduce and digest it into some commodious form. The first step he took in this arduous undertaking was to make a compilation of the three Codes of *Gregorius*, *Hermogenes* and *Theodosius*, and affixing to these the Novel Constitutions of some succeeding emperors, he published them in the second year of his reign.

Codex
Justinianus
528

His attention was next excited to a more extensive and laborious work; to reform and compress the science of the law, for the advantage not only of the student, but of the practitioner also.⁵ The com-

⁵ In his preface to this work addressed to Tribonian and entitled *De conceptione Digestorum*, he amply shews the necessity of such a Digest from the overgrown state of the law and the imperfect manner of teaching it. This preface and that which follows, *De confirmatione Digestorum*, are well worth consulting, not only for the matter which they contain, but for the remarkable purity of their style.

mission

mission was given to TRIBONIAN, A. D.
a civilian of uncommon abilities,
and whom Justinian had before
honoured with peculiar marks of
favour. To assist him were ap-
pointed sixteen celebrated persons,
whose names are mentioned in the
Preface to the Code, and who were
eminent either as magistrates, or as
professors in the academies of the
empire. Their business was to
collect together the most valuable
materials that could be found in
the voluminous works of all the
preceding lawyers, and to connect
and arrange them so as to form a
regular and complete system of ju-
risprudence, "quasi una mens ef-
"set (says GRAVINA) unaque vox,
"idemque sonus." Though to ac-
complish this, the emperor al-
lowed them ten years: the whole
of the business we find was execut-
ed in three, or, as some assert, in
four.⁶ Hence it has happened that

Digests
or
Pandects
533

6. "Huic autem labori Justinianus *decennium* præfinivit:
" Tribonianus vero sibi potius ex celeritate gloriam, quam
" posteris

A. D. 533 Tribonian is accused of wilful neglect and inaccuracy by some writers, and by others of ignorance and incapacity: there are indeed, who have asserted that neither he or his associates consulted the original works which they quote, but contented themselves with such fragments of them as were in common use, though the words of Justinian himself directly preclude such a supposition.⁷

Previous to the publication of this large work, the emperor thought it would not be amiss to prepare his subjects for its recep-

“posteris utilitatem ex operis maturitate pariturus, decennium ad quadrennium contraxit.” *De ortu*, &c. cap. 132.

7 He says in his Oration to the senate and the people, that the compilation was made with great labour from an immense collection of rare books, whose very titles were unknown, except to the learned in the law, and which were with much difficulty procured and arranged by the very illustrious (*gloriosissimus*) TRIBONIAN “quibus omnibus *perfecte lectis* congesta sunt hæc volumina.”

The arguments for and against Tribonian may be found very amply stated by J. CHIFLET in his *Oratio apologetica de juris utriusque architectis*. Cap. 1, 2, 3.

tion,

tion, by a short and simple com- A. D.
pendium of its contents. "Ut ru-
dis Animus studiosi (as it is ex-
pressed) simplicibus enutritus,
facilius ad altioris prudentiæ re-
digatur scientiam:" an extract
was accordingly made, from the
works of the most eminent jurists,
particularly from the Institutes of
Caius and Ulpian which was to
contain *totius legitimæ scientiæ prima* Institutes
elementa. The whole was compri- 533
sed in four books, and published
in the seventh year of Justinian's
reign, one month before the Di-
gests.⁸ "Igitur DIGESTA fuerunt
ante INSTITUTIONES absoluta,

8 "Quibus libris, says GRAVINA of this work, vix ali-
quid superfuit elegantius aut selectius, si quis e contextu
veterum, mixturam discusserit recentioris ætatis." *De oriu,*
&c. cap. 133. For its use and intent see The Constitution
Tanta circa nos, &c. prefixed to the DIGEST.

Of the various editions of JUSTINIAN'S INSTITUTES, that
of Mentz. anno 1472, appears to be the oldest: it is in one
vol. folio, and handsomely illuminated on vellum. Since that
time the work has been published with commentaries and il-
lustrations in almost every country in Europe. The most valu-
able and correct edition is that of ARNOLD VINNIUS, printed

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at

A. D. 533 “ sed confirmata, et edita posterius.” The Digests were scarcely promulged, when considering his

at Leyden, anno 1642, and republished at the same place in 1726, by his countryman HEINECCIUS, who declares it to be an immense treasure both of juridical and philological learning. Præf. ad Arn. Vinn. instit. comment. p. 8. The same HEINECCIUS has himself added considerably to the stock of legal knowledge in his work entitled, *Antiquitatum Romanarum jurisprudentiam illustrantium Syntagma*, which consists of a regular series of classical and historical observations on the *Institutes*, in 2 vols. 8vo.

In the present century also, JOACHIM HOPPIUS published *Commentatio succineta ad Institutiones Justinianas*. Franckfort, 1731.

They have been translated into French by CLAUDE JOS. DE FERRIERE, with elegant illustrations and references to the laws of France, anno 1725.

EDEN's excellent book, *Jurisprudentia Philologica*, and DR. HARRIS's very accurate *English Translation of the Institutes*, are generally known and admired. It may be curious to know there is an edition of them in latin hexameters, by one L. HONORATUS DRACO. Lyons, anno 1551.

9 The DIGESTS were divided by Justinian into seven parts, fifty books and four hundred and thirty titles, a full account of which is given in the Constitution *De confirmatione Digestorum*, and is repeated, Cod. Lib. 1. tit. 17. *De veteri jure enucleando*.

From the numerous testimonies in favour of this work, nothing stronger perhaps can be selected than the following eulogy of LAURENTIUS VALLA, a critic, whose elegance of taste and accurate

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plan of reformation as imperfect A. D.
while any branch of Jurisprudence 533

curate severity of judgment give considerable weight to his commendations: "I have repeatedly read over, says he, the fifty books of the Digests, and always with additional pleasure and admiration; for it is impossible to say which is most striking in that work, the labour and judgment of the selection, the wisdom and equity of the laws, the fund of juridical learning, or the dignity of the language; *"et hæc ipsa in unoquoque illorum ita sunt egregia et perfecta, ut vehementer dubites quem cui præferendum putes, et his nihil addi adimivisse videtur tam eloquentiæ quam latinitatis et elegantiae."* Præf. ad lib. 3. Elegantiarum.

It would be endless to enumerate all the different editions of the Digests. From the original FLORENTINE or (as it is sometimes called) PISAN COPY, above fifty complete ones have appeared, the best of which are undoubtedly those of the 16th Century. The Nuremberg edit. of 1529, in 3 vols. by HOLOANDER, is usually spoken of as the first. That of Florence, published by LÆLIUS TAURELLIUS and his son FRANCIS, anno 1553, in 3 vols. folio, is (as they inform us in their dedication to COSMO DE MEDICIS) printed in exact imitation of the old Florentine MS. and cost them almost ten years labour. DR. TAYLOR calls it *The Glory of the Press*: though STRUVIUS thinks it was excelled by the Venice edition of 1574, in 5 vols. 4to. which contains the *Corpus juris civilis*. "Hæc editio ob chartæ, literarumque nitorem, accuratam imprimendi rationem, distinctiones rubricarum atque adjectum indicem satis locupletem, reliquis omnibus præstat." STRUVII *Hist. juris*. cap. 5. §. 13. Of the more modern editions, none perhaps are comparable with that published anno 1748, by ROB. JOSEPH POTHIER, a learned civilian of Orleans; and which was three years ago re-edited in a very splendid manner at Lyons, in 3 vols. folio.

A. D. 533 remained incomplete, Justinian issued out his orders for a revision of the CODE, which had been published about five years before. His object in this was not only, as he says, to render it more complete by the addition of many new cases and decisions which had arisen since its publication; but to purge it also of many inaccuracies which had been admitted into it. The OLD CODE was accordingly made void, and the new one published in the ensuing year.¹ So scrupulous was the Emperor to preserve this RE-

Codex
repetitæ
Prælectionis

534

¹ “Nemini concedimus ex primâ Justiniane Codicis editione aliquid recitare; sed quod in præsentî *purgato et renovato Codice* nostro scriptum invenitur, hoc tantummodo in omnibus et judiciis et obtineat et recitetur.” Constitut. *Cordi nobis est*, &c. ad Cod. repetit. prælect. de emendatione, Cod. §. 5. This Code is divided into twelve books, in imitation, says Gravina, of the XII Tables, and these again into 776 titles: it contains the Constitutions of 34 Emperors, from ADRIAN to JUSTINIAN inclusive.

The first edition, which is complete in twelve books, is that published by HOLOANDER, at Nuremberg, anno 1530. The former contain only the nine first books. Since that time it has seldom been published separate from the Corpus Juris Civilis.

VISED

REVISED CODE in its original form, A. D.
 that although (as it was natural to 534
 expect) new emergencies would be
 constantly demanding fresh Edicts
 and Institutions; yet he would not
 permit any addition to be made to
 this work. All the regulations
 therefore subsequent to the revised
 Code were suffered to remain in an
 indigested state, under the title of
 NOVEL CONSTITUTIONS, and Novel
 were not collected into a volume Constitutions
 till the last year of his reign; 566
 though (as DR. TAYLOR observes)
 most of them appear to have been
 enacted between the years 534 and
 542.² The greatest part of these
 Novels were written originally in

² These NOVEL CONSTITUTIONS are divided into
 nine Parts or *Collations*, as they are called, and are 168 in
 number, "Ergo centum sexaginta octo Justiniani Novellas
 " nec plures, nec pauciores numerari consentiunt omnes." *Index*
Constit. Novell. prefixed to GOTHOFRED's edition of them in the
 Corpus Jur. Civ. FABRICIUS, who in the 12th vol. of his
Bibliotheca Græca, has given a very comprehensive view of
 these Novels, follows this account of GOTHOFRED, though,
 he premises, cap. 6. that writers have varied considerably in
 respect to their number and arrangement. The first edition of
 these

A. D. 566 Greek: not long however after Justinian's death, a Latin Version, by an anonymous author, made it's appearance.

Volumen
Authenticum
568

This translation was so faithfully executed that it was, by way of distinction, called the AUTHENTIC CODE. It had the lead of every other, in the Courts of Justice, for many years after it's publication, and upon the revival of the Civil Law, recovered its original authority.³

these Novels, worthy consideration, is that by NIC. BOERIUS, at Lyons, 1512. And the best, F. DESMARE's' republication of PITHOU's edition, with the Notes of AUGUSTINUS and his own Glosses, 1 vol. fol. Paris, 1689.

3 "Quamobrem et nos una cum Græco textu hanc Anonymi versionem retinemus in foro." *De ortu, &c.* cap. 135. And LEUNCLAVIUS says, "Laudo consilium Antonini Contii, qui "Novellarum interpretationem veterem omnino publicandam putavit, nam multis in locis ea plenior est et integrior quam "Græcæ editiones." *Notatorum juris*, Lib. 2. p. 365. The disputes about this Latin Translation are infinite; some suppose it to have been made in the reign of Justinian and speak of it as "*injucunda, salebrosa et barbara*." Others again affirm it to be the work of JULIAN, and declaring the original to be "*Asiaticâ quâdam luxuriâ diffusus, prolixitateque nimia scriptus*, commend this translation for being "*compendiosior et stylo non inelegante edita*. ALCIATI *Parergon Juris*." Lib. 2. cap. 46.

There

JULIAN, who was a public reader of the law at Constantinople in the reigns of Justin 2d, Tiberius 2d, and Mauritius, the immediate successors of Justinian, made an *Epitome* of this Latin Version which goes under his name, and which, for a short time, so far superseded the *Authentic Code*, that it had nearly sunk into obscurity.

A. D.

Juliani
Novellæ

570

But none of these works, nor any of those prior to the reign of Justinian, however admired they have been, were ever of any authority in themselves, nor are they to be considered as forming any essential part of what is called, CORPUS JURIS ROMANO-CIVILIS, which, in its strict sense, is applied solely to the INSTITUTES-PANDECTS-CODE and NOVELS OF JUSTINIAN, though in a more extensive

There are many also who doubt it's antiquity, and ascribe it to a Monk of the 12th Century. RITERSHUSIUS, in *jure Justin. in proam. cap. 4. n. 9.* It was published at Lyons, anno 1561, by LUD. MIRÆUS, having the heads of all those Greek Novels which are admitted in the Latin Epitome, inserted in the margin.

signi-

A. D. 570 signification, it is understood to comprehend various other juridical compilations.⁴ [M]

In the Eastern Empire, after the death of Justinian, the laws underwent a variety of modifications. But to excel in civil wisdom and the even administration of justice was not a characteristic of the Constantinopolitan Court. The influence of the Greek law never extended beyond the limits of the empire, and even there it had but a feeble and undefined authority. It is not necessary therefore to be very particular on this head.

During the lifetime of Justinian or (according to some) very soon

⁴ No less than thirty editions of the *Corpus juris Civilis* were produced in the 16th century, at Paris and Lyons only.

The completest is that of DIONYSIUS GOTHOFRED, published by SIMON van LEEUWEN, at Leyden, in one large folio, anno 1663. It contains (besides the Institutes, Pandects, Code and Novels of Justinian) Various other Edicts and Novel Constitutions, The Opinions of Paulus with the Notes of CUIJACIUS, The Fasti Consulares, The Apostolic Canons, Fragments of Feudal Law and of the XII Tables, An extensive Synopsis of Civil Law and very copious Indexes to the whole.

after

after his death, THALELÆUS, who, A. D.
from great eminence in his profes- Thalelæus
sion was called νομικῆς ὀφθαλμὸς, the 566
Eye of the Law, made a translation
of the Pandeets and Code into
Greek.⁵ The Institutes were pub-
lished also in that language, by
THEOPHILUS.⁶

5 It was from this translation of Thalelæus, it is supposed,
that Basilius and his sons copied a great number of laws in
their Greek Code. FABRIC. *Bibl. Græc.* Lib. 6. cap. 6.

6 HEINECCIUS and GRAVINA are of very opposite opinions
with respect to this THEOPHILUS. The former supposes him
to be the same who assisted Tribonian in Justinian's Compila-
tion; the latter expressly calls him, "Alium ab eo qui con-
dendo juri operam navavit:" and in this assertion he is sup-
ported by FABROTTUS, who in his preface to the Paris edition
of 1657, conjectures that he lived in the 10th Century, in
the reign of Constantine Porphyrogen. ALCIATUS. (*Parer-
gen juris*, Lib. 5. cap. 23.) places him as low as the beginning
of the 13th Century, and calls him a follower of Accursius;
but the opinion of Fabrottus is the most general.

DANIEL HUET, (*De claris interpretibus*, lib. 2. p. 133.)
calls this Greek Version of the Institutes "Elegans quidem
"et erudita sed *prolixissima paraphrasis*," which seems contra-
ry to the emperor's injunction "Ut nemo neque eorum qui in
"præsenti juris peritiâ habent, neque qui postea fierent au-
"deat commentarios iisdem legibus adnectere: nisi tantum si
"velit eas in Græcam vocem transformare *sub eodem ordine*,
"eâdemque *consequentia* sub quâ et voce Romanâ positi sunt, quod

A. D. 865--907 It does not appear that any material change took place after this, till the reigns of BASILIUS THE MACEDONIAN and his sons, LEO the Philosopher, and CONSTANTINE PORPHYROGEN, under whom a fresh compilation for the use of the Greek Empire, made its appearance.

Authors are very much divided about the order in which this work was executed and in assigning to each of the emperors their respective parts.

Basilica
or
Procheiron
876

The most probable account seems to be; that BASILIUS first published the *Basilica*, or *Imperial Constitutions*, in forty books, which being a sort of Epitome of Justinian's Code, was called PROCHEIRON, or Manual of Law: that his son LEO re-published the same

"Græci καὶν νόμα dicunt." *De Confirmatione Digest.* and again, *Cod. lib. 1. tit. 17. §. 21.* Nevertheless AUGUSTINUS recommends it as an excellent companion to the Latin Institutes. *Emendationum*, lib. 3. cap. 8. It was first published by FROBENIUS at Basil, anno 1534. The best edition is that by FABROTUS, mentioned above.

work,

work, with an addition of twenty books, under the title of βασιλικά νομιμα, or, ἑξήκοντα βιβλον, and that the compilation was completed by CONSTANTINE, in a revised edition of the *Basilica*, which consisted of *sixty* books, and is the very same text which is at this day extant.⁷

A. D.

Leo's
Basilica

887

Constantine's
Basilica

906

7 That this is the true state of the matter, I think may be collected not only from the work itself, but from the testimony of the ablest civilians, who have commented upon it. See the preface to the several editions, and ASSEMANNI, *Bibliotheca Juris Orientalis*. Lib. 2. cap. 11. & 16.

FABRICIUS, who had seen the MS. of Basilus's *Procheiron*, corrects CUJACIUS (*Observationum*. Lib. 6. cap. 9.) for asserting that it was divided into *sixty* books, whereas it appears, there are *forty* only. FABRIC. *Bib. Græc.* Vol. 12. lib. 6. cap. 6. The best edition of the complete *Basilical Code* is that of FABROTTUS, in 7 vols. fol. Greek and Latin, Paris, 1647.

The two sons of *Basilus* were very eminent for their attachment to literature; LEO, besides his juridical labours, left behind him *A Treatise on Tactics*, and some *Theological* and *Historical* works, which are still preserved among the Vatican MSS. His Oracles of the Greek Empire, accompanied with curious symbolical pictures, are published at the end of the vol. of the Byzantine Historians, by PET. LAMBECIUS.

CONSTANTINE, besides a treatise on *The administration of the Empire* and another on *Tactics*, is author of a large work on

A. D. 906 These Collections, it must be observed, were not made from Justinian's original work, but from the Greek translation of it, and they consisted, of the principal parts of the Pandects and Code, and of all the Imperial Constitutions, from JUSTINIAN to BASILIUS and CONSTANTINE. In imitation of the Institutes, as translated by Theophilus, each of these emperors drew up an Epitome of their larger works.⁸ A custom which prevailed very much after-

the *Ceremonial of the Byzantine Court*, of which a magnificent edition, in Greek and Latin, was printed at Leipzig, in the year 1751, by the joint labour of JO. HEN. LEICHIUS and JO. JAC. REISKIUS, the latter of whom has added a very copious and learned Commentary.

8 "Edidit idem LEO *juris Epitomas*; opus meris definitionibus et regulis constans et satis elegans; quod erat in Palatinâ Bibliothecâ ut FREHERUS testatur; consecisse etiam Leonem Prochirum, ut instar Institutionum foret, AUGUSTINUS, in Notis ad Novellas prodit." SUAREZ. *Notitia Basilicorum*. This is no doubt the Manual which LABBE mentions as being in the Royal Library at Paris. As to CONSTANTINE's *Procheiron*, SUAREZ thinks it was nothing more than a revised edition of his brother's work. Loc. cit.

not

wards, among the greek lawyers, who (as DR. DUCK observes) were not near so numerous as the commentators on Justinian, but appear to have been more fond of *epitomizing* than of illustrating.⁹ This opinion is justified by the following works which have come down to us either entire or in fragments; and many others of a similar nature might be adduced, if it were necessary.

A <i>Compendium</i> of Law, drawn up by MICHAEL ATTALIOTA, by order of the Emperor Michael Ducas, under the title of <i>Pragmatica</i> , ¹ and a <i>Synopsis</i> of the same age, by MICHAEL PSELLUS, written in political verse. ² 'Εξαβίβλον,	Attaliota 1073 or according to Suarez 1077 Psellus 1076
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9 *De Ufu et Autoritate Juris Civilis*, &c. Lib. 1. cap. 5. "Per multa *Manualia Juris* in Oriente fuerunt, omnibus fere patronis causarum sive rhetoribus suum sibi Codicillum, et quasi *vix comitem* conficientibus. CUJAC. *Observat.* Lib. 6. cap. 10.

1 It consists of 96 titles, and is published by LEUNCLAVIUS, Vol. 2. *Juris Græco-Romani*.

2 There is an edition of Psellus, by FRAN. BOSQUET. Paris, 1632.

or,

- A. D. or, *Procheiron* of HARMENOPULUS,³ a Judge in Thessalonica, in six books, compiled from the work of Basilus; in imitation of which a Compilation of Ecclesiastical Law, drawn up many years before by PHOTIUS patriarch of Constantinople, was arranged and published by THEODORE BALSAMON, patriarch of Antioch, with a commentary and illustrations. Such as wish to be informed of many other works of the same kind with these already mentioned, I refer to the various Collections of the *Jus Græco-Romanum*, and to FABRICIUS's *Bibliotheca Græca*, Lib. 6. cap. 6.⁴
- 1143
Harmenopulus
- 1144
Balsamon
- None of these, whatever authority they might have possessed in

³ The original MS. of this work, is in the Vatican. The earliest edition is that of Paris, 1540, by ADAM SUALLEMBERG. The best is DION. GOTHOFRED's, Lugd. Batav. 1576.

⁴ For an historical and critical account of the Greek Law, consult the copious prefaces to the different editions of the Basilica, particularly the *Notitia Basilicorum* of Jos. SUAREZ, prefixed to FABROTTUS's noble edition of the Greek Constitutions, and the dedicatory preface of the same Fabrottus to Chancellor

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the particular districts where they were published, were ever admitted upon the revival of the civil law as general rules of decision in the Courts, or were any otherwise applied and studied in the Schools than as useful treatises for explaining difficulties in the Roman Law, or for illustrating the history and customs of the eastern Empire.⁵

The peculiar situation of the West, at the time when Justinian published his compilation; the tumults which immediately followed; and the revolution which took place in the Italian Provinces about two

cellor SEQUIER. See also the *Chronologia Juris* of MARQUARD FREHER. DR. DUCK, *De usu et Autoritate Juris Civilis*, &c. Lib. 1. Cap. 5. and FABRICII *Bibliotheca Græca*. Lib. 6. Cap. 6.—For a catalogue of the works of the Greek Lawyers, see LEUNCLAVIUS's edition of the *Jus Græco-Romanum*, 1596.

5 “Ex quibus (says GRAVINA, speaking of these works) “atque ex græcorum jurisconsultorum superstitionibus notis et “interpretatiunculis, CUIACIUS multos juris civilis locos restituit, explicavit, et illustravit: ita ut illius Græcorum luminibus adspersa germanam Romanorum jurisprudentiam, “caligine temporum intermortuam, suscitavit.” *De Ortu*, &c. cap. 138.

years

A. D. 568 years after this emperor's death, will sufficiently account for the condition of his laws in that part of the Roman World, where there is little reason to suppose they were ever very generally received.⁶

553--568 From the expulsion of the Goths till the irruption of the Lombards, the interval of tranquility was too short to suffer them to take deep root; besides, the attention of Justinian was, during the last years of his reign, so entirely engrossed by military matters, that it was not in his power to make the best use of that favourable opportunity for encouraging their growth and strengthening their influence,

⁶ It has been the opinion of many respectable writers that the Codes, Novels and Institutes of Justinian were used in many parts of Italy, during the middle ages, without interruption; and the learned MURATORI is inclined to suppose, that even the *Pandects* were never entirely obsolete; in proof of which he produces some ancient Instruments of the 9th, 10th and 11th Centuries, in which references are made to certain passages in that work. *Antiquit. Ital. Medii Ævi.* Tom. 3. Dissert. 44.

which

which was soon after entirely confined to the few greek provinces in Italy. The small Exarchate of Ravenna, where the Roman law had long found an Asylum at last shared the fate of the other Italian Cities, and yielded to the arms of the Lombards.

A. D.

This may be accounted *the æra of the final extinction of the Roman Law*, which during the succeeding ages of the grossest barbarism and ignorance, laid buried in obscurity, and did not revive till toward the middle of the twelfth Century.[N]

752

“Tantaque et tam diuturna barbaries Italiam inundavit, ut jus Romanorum etsi magno studio, deletis Longobardis, a Carolo Magno quæsitum; tamen exemplariorum inopiâ longâque oblivione populorum usque ad sæculum duodecesimum, nempe ad Lotharii tempora in tenebris delituerit. Igitur ut fatum omne Justinianæorum librorum oculis legentium subjiciamus, vixere illi

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K

quidem

A. D. "quidem in Græciâ a JUSTINIANO
 "usque ad LEONEM, nempe ab
 "anno Christi 536, ad annum
 "910. In Italiâ vero (si Raven-
 "nam excipias) resistente ab initio
 "barbarie Gothorum, *nunquam flo-*
 "*ruerunt*, vixque tandem emerse-
 "runt, anno 1130.⁷

Thus then have I endeavoured to display and illustrate the Origin and Progress of the laws of *regal, consular, and imperial* Rome, and to mark, as distinctly as the subject will permit, their various stages of revolution and reform during a period of more than twelve centuries. And here for the present I shall close THE CHRONOLOGICAL VIEW.

The History of THE REVIVAL of THE ROMAN LAW, its Connection with THE FEUDAL AND CANON LAW,⁸ its CHARAC-

7 GRAV. *De ortu*, &c. cap. 139.

8 Writers are very much divided in their opinion respecting the origin of *Feudal Law*: some have refined so far as to think they discover it in Romulus's institution of patron and client; but this (as SELDEN observes) is entirely without foundation; for "though there certainly was a *bond* between the parties, yet it does not appear there was any *possession held* by that bond." *Titles of Honour*, Part 2d. Chap. 1. Sect. 23.

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and ACADEMIES of Europe, together with

Others again have derived it from the military colonies of the Romans. But the conditions upon which these were held do not appear to have been of a feudatory nature. Something of this kind indeed seems to be expressed in the grants made by the emperor Alexander Severus of some conquered territories on the Frontiers "Limitaneis Ducibus et militibus, ita ut eorum ita essent *fi haeredes illorum militarent, nec unquam ad privatos pertinerent.*" LAMPRID. in *Vit. Alex. Sever.* But after all, the most general opinion is, that the Feudal Law owes its introduction to the Lombards and other northern nations, who settled in the Roman provinces in the sixth and seventh centuries, "The power and glory of whose princes" (says Selden) consisting alone in the multitude of such as "were devoted to live and die with them, the bond of such devotion was made chiefly by such gifts of possessions as created a *feudal right* between the Giver and Possessor, confirmed also by an oath on the Possessor's part, which bound him both to be faithful to the Giver and also assistant to him." *Loc. Cit.* MOLINÆI *Consuetudines Paris.* cap. 5. Des Fiefs. CRAG. *Epist. nuncupatoria et Jus Feudale*, Lib. 1. *Dispositio* 4.

From the disunion of the Roman Empire, and the establishment of Papal Authority, the *Canon Law* is universally allowed to have derived its origin. Such was the powerful influence of religion in those ages, that the very acts of obedience which were refused to the best political institutions, were voluntarily yielded to the arbitrary *Decrees of Councils*, the *Opinions of the Fathers*, and the *Edicts of the Popes*.

The most ancient Collection of Ecclesiastical Law, is the *CODEX CANONUM ECCLESIAE UNIVERSAE*. It was by this

the LIVES and WRITINGS of its most eminent PROFESSORS, will furnish copious and interesting materials for a SECOND PART.

Code that the Eastern and Western Churches were for many ages governed, and it is to be considered as the remote source of the *Canon Law*. JUSTELLI. *Præf. ad Cod. Canon. in Bibliothecâ Juris Canonici veteris*. Vol. 1. p. 18. The Canons of the first Œcumenical Council at Nice, A. D. 325, with those which followed, down to that of Chalcedon, A. D. 451. form the principal part of it, and they are the same with those which Justinian has so strongly confirmed in the Novel *De Ecclesiasticis Titulis*, &c. 131. tit. 14. Collat. 9. We read of many other collections of this sort as early as the 6th and 7th Centuries, but the authority of all these was superseded by the famous Compilation of GRATIAN, a Benedictine Monk, who in the year 1157, published a DECRETAL which has been ever since regarded as the basis of the *Canon Law*. The influence of that zeal for juridical pursuits, which was at this period awakened by the discovery of Justinian's Pandects, is visible in the numerous compilations and commentaries subsequent to GRATIAN's work, and the desire of closely imitating that emperor, produced in process of time such a similarity both in the form and character of the Civil and Canon Law, that at last (as DR. DUCK has observed) "the one could no longer exist without the other." *De Usu et Auctoritate Juris civilis*, &c. Lib. 1. cap. 7. DOUJAT *Hist. Du Droit Canonique. Partie, 1^{re}. chap. 17, 18, &c.*

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P. 7. [A]

THERE is no branch of Roman law upon which the ingenuity of Civilians has been more industriously exercised, than upon the History and Interpretation of the XII TABLES. The works to which this obscure but interesting subject has given rise, are many of them extremely valuable, not only for the striking illustrations they afford of the language and manners of a very remote period, but for the frequent light which they throw upon the writings of the ancient Poets and Philosophers.^a

^a The writers upon this subject are very fully enumerated by FABRICIUS, in the 4th book of his *Bibliotheca Latina*, cap. 9.

Of the ancient Commentators, the principal upon record are SEXT. ÆLIUS and L. ACILIUS, both in the 6th Century of
of

80 ILLUSTRATIONS.

The high commendations bestowed upon these curious fragments of civil wisdom, by those who were familiar with them, and who, we know, were well qualified to judge of their merits, must naturally excite in us a mixture of veneration and regret.

Such an encomium as that which CICERO has passed upon them, though perhaps a little exaggerated, might alone be sufficient to convince us of their value. They outweigh, he tells us by the mouth of Crassus, whole libraries of philosophy, and contain in themselves a complete body of juridical wisdom, "Fremant omnes licet : dicam quod sentio,

of the City. SERV. SULPICIUS in the 7th, and ANTISTHIUS LABEO, the founder of the Proculeian Sect, in the 8th. The moderns may properly be distributed into three classes. Such as collected and arranged the scattered fragments of the XII Tables, as LIPSIUS and PITHOEUS. Such as added extensive commentaries to their compilations, as BALDUIN, HOTTOMAN, RÆVARD, AUGUSTINUS; and such as published them with short Scholia and explanatory Glosses, as PRAETIUS and CONTIUS. But none of these are in any way comparable with J. GOTHOFRED, who in the first part of his *Quatuor fontes Juris civilis* has thrown the fullest light upon this subject. The best edition of that work is published by EVERARD OTTO, in the 3d Vol. of his *Thesaurus Juris Romani*. edit. Lugd. Batav. 1727. GRAVINA has also treated largely on this head, with his usual elegance and accuracy, in the 2d book of his *Origines Juris civilis*.

"Bib-

“Bibliothecas meherculè omnium Philo-
 “phorum uno *XII Tabularum* libello authori-
 “tatis pondere et utilitatis ubertate superari.”^b

AULUS GELLIUS has introduced CÆCILIVS the lawyer speaking of them in very high terms to FAVORINUS who, notwithstanding some objectionable points, readily agrees with him, adding “Non minus cupidè Tabulas
 “istas XII legi, quam illos decem libros Pla-
 “tonis de legibus.”^c And the same Philosopher, in another place, severely censures a lawyer, to whom he had in vain applied for an explanation of an obsolete word, for presuming to profess and practise without being accurately acquainted with the Decemviral Laws,^d a work which LIVY has pronounced to be, “Fons omnis publici privatique
 “juris.”^e

To what particular cities of Greece the Deputies of the Roman Commonwealth were indebted for this inestimable treasure, cannot at this distance of time, and from such mutilated portions of it as remain, be satisfactori-

^b *De Oratore*, Lib. 1. cap. 43 & 44. See also many passages in the 2d book *De Legibus*.

^c *Noctes Atticæ*. Lib. 20. cap. 1.

^d Ut supra. Lib. 16. cap. 20.

^e Lib. 3. cap. 34.

ly determined, though much labour and ingenuity has been employed upon the subject.¹ That ATHENS was the principal object of their embassy we have the concurrent testimony of the best writers;² nor indeed can we wonder that the preference was given to this celebrated city upon such an occasion, if we reflect that it was the splendid æra of PERICLES' administration, when not only Philosophy and the Science of Legislation, but every elegant and useful pursuit was carried to such an uncommon degree of perfection, that the Athenian State was eminently distinguished as the general School of Greece.³

Though the influence of the XII Tables was considerably diminished by a variety of new customs and laws, which were at diffe-

¹ GRAVINÆ. *Specimen Prisci Juris*.

CICERO mentions two works which, were they extant, would prove excellent guides in such an enquiry. "Omnium fere civitatum non Græciæ solum sed etiam Barbariæ, ab ARISTOTELE, mores, instituta, disciplinas; a THEOPHRAS-
to leges etiam cognovimus." *De Finibus*. Lib. 5. cap. 4.

² "Missi Legati Athenas." LIV. lib. 3.—DIONYSIUS HALICARNASS. Lib. 10. cap. 54. edit. Hudson. 1704. CIC. *pro Flacco*. cap. 26.

³ Thucyd. Hist. Lib. 2. sect. 37. 41. edit. Hudson, 1696.

rent times introduced,¹ it has been thought that, upon the following authorities, their existence may be traced through almost every period of the Roman History, to the age of Justinian.

We are told that they were first made public, by being fixed up in the Forum on tablets of brass, “*Leges Decemvirales*” “*quibus Tabulis XII est nomen, in æs incisas;*” a custom very general among ancient nations, and frequently alluded to by the poets.² They were afterwards, it may be presumed, removed to the Capitol, which

¹ Hardly ten years had elapsed from the promulgation of these laws, when, at the instance of the Tribune Canuleius, the intermarriage of Patrician and Plebeian families took place in direct opposition to a law in the twelfth table. *Liv. lib. 4. cap. 6.*

The *Æbutian law*, A. U. C. 509. *De judiciis centum-virilibus*, struck a fatal blow at their authority. *Gellius. Noct. Attic. Lib. 16. cap. 10.* And *Cicero* informs us, that the *Cornelian law*, which regulated the Prætor's Edicts in his time, caused those Edicts so far to supersede the XII Tables, that they were no longer considered as the first rudiments of juridical studies. *De Leg. lib. 2. cap. 59.*

² *Liv. lib. 3. cap. 57.* It is understood by *Virgil*, when he says, “*fixit leges—atque refixit*” and by *Ovid*, speaking of the golden age

————— “*Nec verba minantia fixo*

“*Ære ligabantur.*”

84 ILLUSTRATIONS.

became in process of time the grand repository of the laws. We may reasonably infer from what LIVY says of the general desolation occasioned by the irruption of the Gauls, that the original Tables were at that time either lost or destroyed, but that among other ancient records, they were afterwards carefully collected and restored to their pristine state.¹ The many civilians who are celebrated as commentators upon these copies of the original laws in the ages which followed, till the time of Cicero, will be sufficient to prove their existence at that period,^m when, as he himself acquaints us, “Discebant Pueri XII “ut carmen necessarium.” Not long after this, we find DIODORUS SICULUS speaking of them as extant in his day;ⁿ and AULUS GELLIUS, who lived in the second Century, quotes a variety of passages from them. In the next age there occurs an epistle of ST. CYPRIAN, in which we read “Incisæ sint “licet leges XII Tabularum, et publico ære

¹ Lib. 6. cap. 1. et Lib. 3. c. 34 & 57. DIODOR. SICULUS, Lib. 12.

^m See note (a) p. 79.

ⁿ Lib. 12. cap. 26. edit. Wesseling. See also what Suetonius says of Vespasian's zeal to restore the laws in the next age. *Vit. Vespas.* Lib. 8. sect. 8.

“pre-

“ præfixo jura præscripta; inter leges ipsas
 “ delinquitur, inter jura peccatur, &c.”^o
 And about a century after, they are alluded to by the Poet AUSONIUS.^p The six books of commentaries which Caius had written upon them were extant (as is evident from various parts of the Digests) in Justinian’s time: from which DR. TAYLOR conjectures, that the laws themselves must necessarily have been extant also; for (says he) “ I can hardly suppose a comment without
 “ the text.”^q When we recollect the miserable state of human learning in general, and of legislative knowledge in particular, during the following ages, we cannot be surprised that these curious relics of civil wisdom were, after the sixth century, no longer objects of attention. From this period nothing occurs which can serve to throw any further light on their history; and since the revival of the civil law, notwithstanding the most diligent enquiries have been made, no ancient copy of them has been discovered.

Of the original dialect of the XII Tables

^o *Ad Donatum*, Lib. 2. Epist. 2.

^p *Idyll*. 11.

^q *Elements of Civil Law*. p. 13. and again *In Comment. ad l. Xviralem*. De Debitore dissecando. p. 4.

we are incapable of forming any probable conjecture. The most ancient authentic Inscription in the latin language extant, is that on the *Duillian Column*; which we are informed was erected in the year of the City 493, in memory of a great naval victory gained by C. DUILLIUS over the Carthaginians, and was some years after struck down by lightning.* At the latter end of the 16th Century, part of its shaft and the base, containing this curious inscription, were discovered, in digging near the Arch of Septimius.*

From the specimen which this monument affords us of the language, at the close of the 5th Century of the City, we may form some general idea of that which prevailed two hundred years before; and may be led to suspect that those fragments of the Decemviral Laws, which are preserved in the writings of

* LIV. lib. 42. cap. 20. VALER. MAXIMUS, Lib. 3. cap. 6.

* Both Pliny and Quintilian speak of this column as being in the Forum in their time. Hist. nat. lib. 34. cap. 5.—Lib. 1. cap. 7. The inscription was first published, but in an imperfect manner, by ALDUS MANUTIUS. Afterward with better success by PET. CIACCONIUS, who has added very excellent illustrations. It is to be found also in GRÆVIUS's edition of L. ANNÆUS FLORUS, ann. 1702. and in NIC. FUNCCIUS. *De Pueritiâ Latinæ Linguae.* p. 116, &c.

Cicero,

Cicero, Gellius, and Macrobius (rude as they may, even in their present dress, appear, compared with the productions of more polished ages) have not come down to us in their original form.^t It seems that even before the time of CICERO, heavy complaints were made of the obscurity of their style, and many parts were become so very obsolete, that the most profound antiquaries were unable to discover their true meaning." In GELLIUS, the lawyer to whom I have before alluded, in defence of his ignorance, answers "Ego verò
 "dicere atque interpretari hoc deberem, si
 "jus *Faunorum* et *Aboriginum* didicissem —
 "Sed enim quum omnis illa XII Tabularum
 "antiquitas, *Lege Æbutiâ latâ*, consopita sit,
 "studium, scientiamque ego præstare debeo
 "juris et legum, vocumque earum, quibus
 "utimur."^w The same writer has related the principal heads of a very curious conversation upon this subject. In consequence of some objections, accidentally started, to the

^t See a treatise of FUNCCIUS, *De Origine latinæ linguæ*. cap. 4. & 5.

^u *Mulieres ne lessum, funeris ergo, habento.* Tab. X. "Hoc
 "veteres interpretes Sex. Ælius. L. Acilius non satis se intel-
 "ligere dixerunt." CIC. *De legibus*, Lib. 2. cap. 23.

^w *Noctes Atticæ*. Lib. 10. cap. 16.

letter and spirit of the Decemviral Laws, CÆCILIUS enters into a formal defence of them. He among other things, pronounces them to be “inquisitis, exploratisque multarum urbium legibus eleganti atque absolutâ brevitate verborum scriptæ,” and adds that the present obscurity of their language ought to be no argument against their original merit, “nam longa ætas, verba atque mores veteres oblitteravit, quibus verbis moribusque sententia legum comprehensa est.—Nec ideo contemnas legum istarum antiquitates, quod plerisque ipsis jam P. R. uti desiverit. Non enim profecto ignoras legum opportunitates et medelas pro temporum moribus et pro rerum publicarum generibus, ac pro utilitatum præsentium rationibus, proque vitiorum, quibus medendum est, feroribus mutari et flecti; neque uno statu consistere, quin, ut facies cœli et maris, ita rerum atque fortunæ tempestatibus variantur.”^x

He then proceeds to combat an objection made to the unwarrantable severity and in-

^x Ut supra. Lib. 20. cap. 1.

SENECA, in ridicule of those who affected to make use of antiquated terms, says, *Duodecim Tabulas loquuntur*. Epist.

consistency of some particular laws, especially of that which prescribes Retaliation in cases of injury, and another which was supposed to permit a number of defrauded Creditors *to cut in pieces the body* of an insolvent Debtor.^y He shews that these were perfectly suitable to the manners and genius of the Roman people in that early age, especially the latter, which, however cruel it might then appear, was nothing more than the natural result of those rigid notions which the first Romans entertained of public and private faith, and as a strong argument in its favour, he defies his antagonist to produce a single instance of its ever having been put in execution.^z

It may appear strange that a fact established upon the concurrent testimony of the best ancient writers, and still further strengthened

^y See the genuine sense of this law most ingeniously restored and beautifully illustrated by DR. J. TAYLOR, in a treatise entitled, *De inope debitore in partes diffecando*. Cantab. 1742.

^z When LIVY describes the horrid punishment of Mettius, the Alban General, he adds “*primum ultimumque illud supplicium apud Romanos exempli parum memoris legum humanarum fuit. In aliis gloriari licet nulli gentium mitiores placuisse pœnas.*” Lib. 1. cap. 28.

by the general acquiescence of the learned in all succeeding ages, should at last become a matter of controversy. This however has been the case in the history of the XII Tables. At the beginning of the present century a treatise was published by a Neapolitan civilian, entitled "*Principi di una Scienza nuova intorno alla natura delle nazioni,*" in which all the principal circumstances related by different authors of the origin and establishment of these celebrated laws are canvassed, and in the conclusion denied.* This same idea was adopted and considerably extended about fifty years ago in France, by MONS^r BONAMY, who, in three elaborate Dissertations endeavours to prove,

* GIOVAN. BATTIST. VICO; who confesses that his doubts were first awakened by the following inconclusive passage in Macrobius. "*Ita Hercules ut de ipsis XII Tabulis factum est, quarum ubi contemni antiquitas cœpit, eadem illa quæ illis legibus cavebantur in alia latorum nomina transferunt.*" Lib. 2. cap. 13. which clearly refers to times subsequent to their compilation and therefore cannot in any shape apply to the æra of the disputed embassy. GANASSONE, an Italian Nobleman, not long since composed a tract in further support of Vico's arguments; but both these writers have been very ably confuted in some Dissertations published about two years ago, "*Intorno al trasporto delle Romane Leggi delle XII Tavole, dalla Grecia.*" by Abate ANT. STRAMIGIOLI.

that

that the famous embassy to Greece, for the purpose of collecting a system of law for the Roman Republic, was a fiction, politically devised by the Patricians, to amuse the attention of the people; and that during the pretended absence of the commissioners, the leading men of the State were employed at home, in new modelling their own original laws and obsolete institutions, which, at the end of three years, they imposed upon the credulous public as the fruits of the foreign expedition.^b This singular opinion MONS^r BONAMY has with great address attempted to establish, not only on the testimony of ancient lawyers and historians, but on a variety of internal evidence. But whatever praise may be due to this excellent scholar, for having laid open to us a valuable treasure of juridical and philological learning in defence of his favorite paradox, we must at the same time observe that the greatest part of his argument seems to be founded upon very equivocal and partial citations; nor do I think, that from the whole, collectively considered, more can reasonably be inferred, than that the XII tables did not consist merely of greek

^b Tom. XII. Memoires de l'Académie royale. p. 27, &c.

laws, but that a considerable number of the original institutions and customs of regal Rome, which had grown obsolete since the great revolution, were adopted and revived under different forms, by the Decemvirs, in this new compilation: a fact which DIONYSIUS and other authors of the highest authority constantly allow, and which has been the invariable opinion of all those writers who have employed themselves in analysing and comparing the Regal and Decemviral laws.^c

I cannot conclude this article without taking notice of two very common errors in respect to the XII Tables. The first is, that they were originally drawn up in verse. This opinion appears to have taken its rise from an expression of CICERO, who tells his friends “*Discebamus pueri XII ut Carmen necessarium.*” The advocates for it remind

^c DION. HALICARN. Lib. 10. cap. 57 & 60. Lib. 2. cap. 27 & 28. LIV. Lib. 6.

What BALDUIN says of the Decemvirs conduct with respect to religious institutions, seems capable of a general application. “*Ne leges sacratas abrogarent cautum erat, eas itaque non sustulerunt, sed quicquid præterea desiderari videbatur, collegerunt.*” *Præfat. in comment. in XII. Tab. CUIACIUS, Lib. 3. cap. 40. Observationum,*

us that the laws of Charondas, which the Athenians usually sang at their banquets, were undoubtedly metrical, as were also those which Tyrtaeus and Terpander set to music, for the use of the Lacedæmonian State. To this it might be answered, that such a custom, though perhaps necessary among a people who possessed no written laws, could be of little advantage at Rome. But to wave this argument. It is sufficient to observe that the passage itself will not justify such an opinion. A variety of instances might be produced where the word *Carmen* is used without any allusion to metrical composition. CICERO, in his Oration for *Murena*, speaking of *the Prætor's Edicts*, says, “Ei quoque *Carmen* “compositum est.” And again, *Pro Rabirio*, the expression occurs in a similar sense. LIVY has, “Jurare cogebantur diro quodam car-
“mine;”^d and GELLIUS quotes a passage from a work of Cato, entitled “*Carmen de* “*moribus*” which has nothing metrical either in its sound or appearance.^e In these and many other examples which might be adduced, the word plainly signifies, any thing

^d Lib. 10. cap. 30.

^e *Noct. Attic.* Lib. 11. cap. 2.

drawn up in that concise sententious form, observable not only in the Edicts and Oaths, but in many public Acts and Instruments, both of ancient and modern nations; and in this sense alone it is most reasonable to suppose it was applied by CICERO to the XII Tables.

The other error alluded to, is, that this same writer in his work *De Legibus*, had it principally in view to expound and comment upon the XII Tables, and that most of the laws which occur there, are quoted from this collection. But does not CICERO himself seem to disown this intention, at the very opening of the first book, when he explains the scope and object of his proposed discussion? "I will not, says he, confine my enquiries to the laws and institutions of any particular community, but proceeding on a more enlarged and philosophical plan, will extend them to the general principles of man's social connections, his interests and actions, which must necessarily lead to the discovery of my grand object, the Source of *Universal Law and Justice*." "Non ergo," rejoins ATTICUS a Prætoris Edicto, ut "plerique nunc, neque a *XII Tabulis*, ut "superiores, sed penitus ex intimâ Philosophiâ hauriendam juris disciplinam putas."

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Doubtless, replies CICERO, and therefore, tho' our own laws are very worthy such consideration, I shall not make them the subject of my discourse, "Sed nobis ita complectenda in hac disputatione *tota causa universi juris et legum*; ut, hoc civile quod dicimus, in parvum quendam et angustum locum concludatur naturæ. *Natura enim juris explicanda est nobis, eaque ab hominis rependa natura:*^f" from which we may conclude, that notwithstanding a great number of the Decemviral laws are evidently quoted and referred to by him, they are only occasionally introduced, and do by no means constitute any essential part of his plan.

^f *De Legibus*, Cap. 5, &c.

THE

P. 13. [B]

THE profession of the law was indebted to the MUCIAN Family for some of its most illustrious characters.^s It was under their tuition that Cicero imbibed the first principles of juridical knowledge, an obligation which is very nobly repaid by the honourable memorials he has left behind of their virtues and accomplishments. Their inflexible attachment to public business appeared to be hereditary, and the high compliment which is paid to Q. MUCIUS, the Augur, who at a very advanced age was amongst the foremost in times of danger. "Vigilare, cogitare, adesse animo, semper aliquid pro Republicâ aut facere aut dicere," might with equal justice be applied to the whole family.^h We

^s "Quorum vero patres aut majores aliquâ gloriâ præstiterunt, ii student plerumque in eodem genere laudis excellere: ut Qu. Mucius. P. Filius in jure civili." *De Off.* Lib. 1. cap. 32.) which is particularly true of the Roman people, among whom, it has been remarked, more instances may be found of hereditary professions than in any other state whatever.

^h Philippic, 8. sect. 19.

have

have a very striking example of the Patriotism of this venerable Statesman, who at a time of general alarm, though worn down with age and sickness, and almost deprived of the use of his limbs, took his station in the Senate, where “*hastili nixus, et animi vim, et corporis infirmitatem ostendebat.*”¹ He is said to have left many useful works behind him, and among other learned labours (after his infirmities had prevented his regular attendance in the courts) “*Jus civile constituit, generatim in libros decem et octo redigendo.*”^k His two brothers were also very high in their profession, and distinguished themselves on a variety of occasions by their learning and public virtues. QU. MUCIUS SCÆVOLA, son of the elder of these brothers, is particularly celebrated, as having been Cicero’s præceptor, after the death of MUCIUS the Augur, under whose roof he had till that time been prosecuting the study of the law.^l To quote testimonies of the eminence of the younger MUCIUS, both as a statesman and a lawyer,

¹ Orat. pro Rabirio. It is not many years since our country afforded an excellent companion to this picture.

^k POMPONII, *Orig. Juris* in DIGEST, Lib. 1. tit. 2.

^l De Claris Oratoribus. 89.

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would

would be to transcribe entire pages from the works of his illustrious pupil, who (particularly in his treatise "De claris Oratoribus" and in his larger work "De Oratore") speaks of him with uncommon veneration. Comparing him with CRASSUS, his colleague in office, he says, "Ut eloquentium jurisperitissimus Crassus, Jurisperitorum eloquentissimus Scævola putaretur," and after much more encomium he adds of Scævola, "Quare fit nobis Orator in hoc interpretandi, explanandique et differendi genere mirabilis, sic ut simile nihil viderim."^m

SERVIUS SULPICIUS, another highly distinguished character in the profession of the law, was a friend and fellow student of Cicero,ⁿ whose writings abound with very flattering testimonies of his extraordinary talents. After having particularly explained to Brutus

^m Loc. cit. The whole comparison of these two great Statesmen is admirably worth consulting.

For a full account not only of the Mucian Family, but of the general state of Jurisprudence in the 7th century of Rome, see an excellent work of F. BALDUIN, entitled, *De Jurisprudentiâ Mucianâ*.

ⁿ "Nam et in iisdem exercitationibus, ineunte ætate fuimus; et postea una Rhodum ille etiam profectus est, quo melior esset et doctior." *De claris Orat.* 41, 42.

his singular happiness in arranging and interpreting the most intricate points of law, and the systematic manner in which he conducted all public business, he adds, “Hic enim attulit hanc artem (Dialecticam scilicet) omnium artium maximum quasi lucem, ad ea quæ confuse ab aliis aut respondebantur aut agebantur—Adjunxit etiam et litterarum Scientiam, et loquendi elegantiam, quæ ex scriptis ejus, (quorum similia nulla sunt,) facillime perspicui potest.” We cannot but regret being deprived of compositions which received such an encomium as this from the mouth of so consummate a master in the art; especially when we are told, that it was in a great measure owing to the elegant innovations of this laborious lawyer, that Roman Jurisprudence became less subtle and involved, and that it acquired from his pen a polish unknown to any former age. In the writings of Sulpicius it was found united with the most rational philosophy, cloathed in all the graces of a language then at its meridian, and interspersed with striking illustrations of ancient Usages, both in public and private life.^p

^o Loc. cit.

^p Something like this was revived in the classical labours of Alciatus in the 16th Century; and has been happily adopt-

What a picture of patriotism and civil virtue has Cicero given us in that animated Oration which he pronounced before the Senate upon the death of this great Statesman, in consequence of which he obtained from them the noblest reward which national gratitude can bestow on departed merit, a funeral and Statue at the public charge. Though great allowances are to be made for the ardour of friendship, which perhaps never glows stronger than on occasions like this, yet the uniform strain of affection and regret, which so naturally arises from the enumeration of his several virtues, at the same time that they place the character of Cicero in an amiable light, leave upon the mind a very deep impression in favour of Sulpicius.⁹

ed in our own age, in that justly popular work "*Observations on the Statutes chiefly the more Ancient.*"

⁹ Among many other similar expressions of praise, he breaks out "Nec vero filebitur admirabilis quædam et incredibilis et pæne divina ejus in legibus interpretandis æquitate explicanda Scientia. Omnes ex omni ætate, qui hâc in civitate intelligentiam juris habuerunt, si unum in locum conferantur cum Ser. Sulpicio non sunt comparandi. Neque enim ille magis *juris* consultus quam *justitiæ* fuerit." Philippica. 9. CARDINAL BEMBUS called this Philippic, Cicero's "Golden Oration."

It

It has been questioned whether the ROMAN Orator himself should be ranked among the Professors of the Law. That he is omitted in the catalogue of POMPONIUS and in most of those which have been drawn up since his time, were it strictly true, would prove very little. But it should be observed that, POMPONIUS, though he cannot perhaps be said to have given him a distinct place in his catalogue, has nevertheless introduced his name in such a manner as leaves little doubt of the high opinion he entertained of his legal abilities. “SERVIUS *in causis orandis primum locum, aut pro certo post MARCUM TULLIUM obtineret.*”

To every one who is at all conversant with the writings of CICERO, it must be evident, that it was his constant ambition to distinguish himself as an Orator and a Statesman, and that to this grand Object the whole system of his education, and every circumstance of his conduct during the early part of his life, was uniformly directed.

This might be illustrated by a multitude of instances from various parts of his works, but let it suffice to remind my reader of that

¹ *De Orig. Juris. Dig. lib. 1. tit. 2.*

very interesting relation of his early studies which he delivers to his friends, Brutus and Atticus, in his discourse "De Claris Oratoribus." From this it plainly appears that his attention was principally engaged in the acquisition of such splendid accomplishments as were known to be absolutely necessary in the eminent stations he aspired at, but which for a mere practitioner of the law would at best have been thought superfluous.* It is not reasonable to suppose he would have sought at Rhodes, at Athens, or in the cities of Asia Minor† for that knowledge, which by his own confession "neque extra Romam usquam, neque Romæ, rebus prolatis, quidquam valet." Whatever inclination he might have had, for the business of the bar, before he set out on his literary travels, he sought on his return a wider field for the exertion of his talents, and from that time was constantly engaged in the most active

* Cap. 90, 91, &c.

† "Cum venissem Athenas, sex Menses cum Antiocho — fui, studiumque philosophiæ nunquam intermissum renovavi — Post a me tota Asia peragrata est cum summis quidem Oratoribus quibuscum exercebar — Quibus non contentus Rhodum veni, meque ad eundem quem Romæ audiveram Molo-nem applicavi." *Loc. cit.*

scenes of public life. Upon these circumstances, and upon some disrespectful expressions which are to be met with in his writings, an opinion has been founded, that Cicero's proficiency in the law was not very great, and that he considered the Science in rather an unfavourable light." Occupied however as he was, at first in the pursuit, and afterwards in the application of political and philosophical knowledge, we have the best authority for supposing that he was very far from being indifferent to the more confined study of the Civil Law, a study which he frequently acknowledges to be of considerable importance in every branch of life, but in a Statesman and an Orator absolutely indispensable. In those pursuits, "*perdiscendum jus civile, cognoscendæ leges.*" And again "*iis qui perfecti oratores esse vellent, juris civilis cognitio est necessaria.*" That he also respected and successfully cultivated juridical learning, is evident, not only from the forensic business in which we find him sometimes engaged, but from many express declarations in

^u Acta Eruditorum. Mensis Martii, Anno 1720.

^w *De Oratore*, Lib. 1. cap. 34. 44. and indeed the greater part of the first book is employed in support of this opinion.

his

his works. "A primo tempore ætatis (speaking of himself by the mouth of ATTICUS) "juri studere te meminisse quum ipse etiam ad "Scævola ventitarem, neque unquam mihi "visus es ita te ad dicendum dedisse, ut "jus civile contemneres."^x "You ridiculed me (says he in a letter to TREBATIUS) for asserting at table, that it had been a disputed point, whether an heir could prosecute for a theft committed on his property before he came into possession: now though I had drank rather freely and returned home late, I transcribed the inclosed case, by which you will find I was in the right; but observe, though Ælius, Manilius, and Brutus deny the right, my opinion is on the opposite side of the question.^y" This surely is not spoken in the style of a man ignorant, or superficially acquainted with his subject, and when we reflect that it was an opinion confidently given upon a circumstance arising out of one of the most intricate and extensive branches of Roman Law, this letter will perhaps prove more than at first sight may be suspected.

QUINCTILIAN, speaking of a common practice among the young men at Rome, of

^x *De Legibus*. Lib. 1. cap. 4.

^y *Epist. famil.* Lib. 7. Ep. 27.

deferring to study the law, till they found there was no probability of succeeding as state Orators, and alledging in excuse for their late application, that they had found it impossible to unite these two pursuits, adds, as an illustrious exception, "MARCUS TULLIUS at the busiest æra of his life, not only continued to cultivate the science of the law, but even had begun to *compose* something on the subject: a plain proof that an Orator, may if he please, find time to instruct both himself and others in legal matters.²" It is principally with a view to this latter advantage, that CRASSUS (who is supposed to deliver the sentiments of CICERO) has pronounced the following fine encomium on the study of the Civil Law. "What employment is there that can render retirement in the decline of life more glorious and ho-

² Lib. 12. cap. 3. *Oratori juris civilis scientia necessaria*. The composition alluded to is probably that mentioned by AULUS GELLIUS, under the title *De jure civili in artem redigendo*; and in that case CICERO would stand condemned from his own mouth, if he had undertaken such a work without the requisite qualifications; for he has declared, "Nihil est quod *ad* *Artem redigi* posset nisi ille prius, qui illa tenet quorum *Artem instituere* vult, habeat illam scientiam, ut ex iis rebus *quarum Ars* nondum sit, *Artem efficere* possit." *De Oratore*. Lib. 1. cap. 41.

nourable than the Interpretation of the Laws? For my own part I have ever considered this as the grand object of juridical studies, and have from my youth prosecuted them, not only with a view to the business of the Bar, but with the hopes, that when my infirmities should prevent my attendance abroad, my house would become a general resort of Clients. A Statesman who thus retreats in his old age from the bustle of public life, may say with the Pythian Oracle in Ennius, that, on his advice, the wills and actions of all his fellow citizens depend; for in fact the house of a Counsellor may justly be called the *Oracular Shrine* of a whole city." Is it consistent then to imagine, that, in those reflections which Cicero sometimes throws out against the law, any general satire on the profession was intended? Does he not himself point out to us the object of his invective, when, in the Oration for Murena, he exhausts his whole stock of raillery on that flimsy science (as he terms it) "quæ
"prope in singulis litteris, atque interpunc-
"tionibus verborum occupata est." And it

^a *De Oratore. Lib. 1. cap. 45.*

^b It was on this occasion that Cato exclaimed "O! Dii Boni, quam ridiculum Consulem habemus!"

should

should be observed that in the comparison which is afterwards made between the three most honourable occupations at Rome, the preference given to the professions of arms and eloquence, is not founded on any intrinsic superiority, but on the nature of a government whose principal honours and rewards were to be obtained only in those two stations. “Il-
 “ lud dicam nullam esse in illâ disciplinâ
 “ (*Juris civilis* scilicet) munitam *ad Consulatam*
 “ viam— Quapropter non solum *illa gloria*
 “ *militaris*— verum etiam *dicendi consuetudo*
 “ longe et multum isti *vestræ exercitationi*
 “ *ad honorem* antecellet.” If, in short, Cicero in the heat of his harangue, has declared, that in three days he would engage to profess himself a complete lawyer,^d the context shews us that no reflection was intended on the honest practitioner, but that the ridicule was aimed solely against those ignorant pretenders, those *leguleii* (as he elsewhere calls them) who with no other qualifications than a string of juridical forms and a ready flow of forensic jargon, had the vanity to suppose themselves perfect masters of their

^c Pro *L. Murenâ*. Sect. 11.

^d Ut *supra*. Sect. 13.

profession, and calculated on that account, to shine in the highest departments of the State.*

* CORN VAN BYNKERSHOEK has handled this question relating to Cicero, in his *Opuscula varii Argumenti*. §. 46. Lugd, Batav. 1719.

P. 14. [C]

OF all philosophical tenets, those of the STOICS appear to have been the most generally adopted by the Roman Lawyers. They not only borrowed a great variety of legal terms and definitions from the School of ZENO, but founded many principles of law upon stoical notions. We may be convinced of this from what remains of CICERO's *Treatise on Laws*, especially the beginning of the first Book and the whole of the second, which contains Rules regarding Religion and the Worship of the Gods.

The

The close union which subsisted between divine and human law, in ancient Rome, gives additional propriety to what is frequently said of the old Civilians, that they were "*Juris divini et humani periti*," and of their profession, that it was "*divinarum atque humanarum rerum notitia.*"^f Both definitions clearly founded upon the stoical one of philosophy, "*Illa autem sapientia rerum est divinarum atque humanarum scientia.*"^g

This Sect was so fashionable in Cicero's time, among those who embraced the profession of the law, that it almost excluded the Academic and Peripatetic Philosophy from that particular line. One reason for this preference may be drawn from the character of the stoical School, which being more clear and accurate in its distinctions, and more scrupulous in its definitions, was better calculated than the declamatory Sect of the Platonics for a connection with that Science, which of all others requires the greatest precision and perspicuity.^h This cir-

^f *Institut.* Lib. 1. tit. 1.

^g *Cic. De Officiis.* Lib. 1. c. 43.

^h It is on his singular excellence in these essential points, that CICERO founds his commendation of his friend SULPICIUS.

cumstance is strongly marked by CICERO, when with a view to such a distinct application of these Sects to public business, he draws an admirable parallel between them. He seems to be decidedly of opinion that the language of the Stoics was best calculated for juridical transactions; but the style of the Academy for the weightier affairs of state and for popular Orations “*Omnes fere Stoici*” “*prudentissimi in differendo sint, et id arte*” “*faciant, sintque Architecti pæne verborum*” “*; iidem traducti a disputando ad dicendum, inopes reperiantur.*—Quod si omnia” “*a philosophis essent petenda; Peripateticorum institutis commodius fingeretur Oratio*” “*—Nam ut Stoicorum adstrictior est Oratio*” “*aliquantoque contractior quam aures populi*” “*requirunt, sic illorum (scilicet Academico-*” “*rum et Peripateticorum) liberior et latior*” “*quam patitur consuetudo judiciorum et fori.*”¹

A further cause for this union of Stoicism and Jurisprudence has been discovered by some writers in the Laws of DRACO, which they conceive to be the remote source of the

CIVIS. *De claris Oratoribus.* §. 41. Some particular Lawyers of the Stoic philosophy are mentioned in the same work. §. 30. 41. The Mucian Family were all of this Sect.

¹ Ut supra. §. 31.

Roman

ILLUSTRATIONS. III

Roman law. In this severe Code, say they, the fundamental principle is known to have been, the subjecting all crimes to the same degree of punishment, to which a celebrated doctrine of the Stoics, namely, the equality of crimes, bears a very exact analogy.*

But after all, perhaps the most probable reason for this connection may be, that contrary to the custom of most other Sects, the followers of ZENO and CHRYSIPPUS were not only permitted, but even enjoined to engage in public business. Πολιτεύεσθαι τὸν σοφὸν was a very favorite position of the Stoics; and TACITUS, speaking of this Sect, tells us, that its doctrines made men “turbidos et negotiorum appetentes.¹”

From the influence of this philosophy upon the lives and opinions of some of the most eminent Civilians, and from the frequent reference which they made to its principles we may account for many laws, whose justice and consistency will not otherwise be thoroughly comprehended. A minute en-

* CUJACIUS has produced many points of resemblance, *Observationum*. Lib. 26. cap. 40. which are also given by GRAVINA in his Chapter *De Jurisconsultorum Philosophiâ*, with additional confirmations. *De Ortu*. Cap. 44.

¹ *Annalium*. Lib. 14. cap. 58.

quiry into the Stoicism of the Civil Law, might be rendered an amusing and curious work, not only to the Antiquary and the Civilian, but also to the classical scholar. It would probably clear up many obscurities in the Roman writers, and illustrate in some degree the customs and manners of that people.^m

^m See EVERARD OTTO's Preface to his *Thesaurus Juris Romani*. TAYLOR's *Elements of Civil Law*. p. 67, &c.

Hæc duri immota Catonis

Secta fuit, servare modum, finemque tenere

Naturamque sequi, patriæque impendere vitam

Nec sibi sed toti genitum se credere mundo.

LUCAN. *Pharsal.* Lib. 2. v. 380, &c.

P. 15. [D]

FROM frequent instances which occur in the first periods of Roman history, we may infer that the term PRÆTOR was originally applied to almost all the principal Magistrates of the State. AULUS GELLIUS
cites

cites a law of the XII Tables which condemns slaves convicted of theft to be scourged and thrown from the rock; with an exception of such as are under age, who are only to suffer the former part of the punishment *Prætoris Arbitratu*.^a To what particular office this alludes cannot be clearly determined, for Livy speaking of the very period when it was made, mentions *Prætor* as a general term, and adds “His enim temporibus nondum Consulem, Judicem, sed *Prætorem* appellari mos fuit,^o” and the same writer in another part of his history tells us of a law which enjoined “Ut qui *Prætor Maximus* sit, idibus septembri clavum pangat,^p” which may signify the Dictator, the Consul, or in short any supreme magistrate for the time being. In the year of the city 387 an officer was created by the name of PRÆTOR, into whose hands was committed the administration of justice, together with several other duties which the Kings, and afterwards the Consuls, had been accustomed to exercise; and from this time the title ceased to be promiscuously applied. The ostensible reason

^a *Noël. Attic. Lib. 11. cap. ult.*

^o *Lib. 3. cap. 55.*

^p *Lib. 7. cap. 3.*

given for the creation of this new officer was, that the Consuls being frequently obliged to take the field, to repel the incursions of neighbouring states, it was thought expedient to create a magistrate who might supply their place, and administer justice in the City without being liable to such interruptions. But it is most probable from what LIVY says, that this office, like many others, originated in that restless spirit of jealousy which perpetually subsisted between the two orders of the State, and was considered rather in the light of a necessary concession than of a public advantage. His words are “Concessum-
 “que ab nobilitate Plebi de Consule plebeio;
 “a Plebe nobilitati de Prætoris uno, qui jus
 “in urbe diceret ex patribus creando.¹”
 This office of *Prætor Urbanus* being confined to the Patrician families was always regarded in a very honourable light, and as an intimate acquaintance with the laws was necessary for the proper discharge of its several duties, we find that it was usually filled by the most eminent civilians of the age. “Egre-
 “gia est (says CICERO of this office) et ad

¹ Lib. 6. cap. 42. Besides the *Prætor Urbanus*, there were others called *Peregrini* and *Provinciales*, but the City *Prætor* had always the pre-eminence.

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“ Consulatam apta Provincia, in quâ laus
 “ æquitatis, integritatis, facilitatis, ad ex-
 “ tremum Ludorum voluptate concluditur.”

To this we may add, that the Prætor’s tribunal was emphatically called *venerabile legum altare*, and the law delivered from thence *viva vox juris civilis*.

If there be any truth in L^d. BACON’s maxim, “ as that law is ever the best which leaves least to the breast of the judge, so is that judge the best who leaves least to himself,” the *Cornelian Law*, which made the Annual Edict of the Prætor immutable, must be considered as an excellent institution. It is no uncommon thing to confound this *Annual perpetual Edict*, (if I may use the expression) with the perpetual Edict of JULIAN, or, as it is frequently called, of ADRIAN. GRAVINA’s distinction

* Orat. *pro Murenâ*. The right of presiding at the public games constituted the principal glory of the Prætor’s office and under all the variations which it suffered this privilege appears never to have been lost, either at Rome or Constantinople. Vid. COD. THEODOS. L. 5. 16. *De prætoribus*. The magnificence frequently displayed upon these occasions has been described by many ancient writers, and has afforded JUVENAL a very fair subject for ridicule. Sat. 10. v. 36. &c.

* See this maxim much extended in his *Speech upon receiving the Seals and taking his Seat in Chancery*.

is worth attending to. "The Prætor's Edict (says he) as regulated by the *Cornelian Law*, was called *perpetual*, because by that law the Prætor was bound to adhere without variation during the year of his office to the rules he had laid down when he first entered upon it: but in the following year these rules were not considered as binding upon his successor, unless he chose voluntarily to adopt them. ADRIAN'S Edict was called *perpetual* because it was not left to the will of any Prætor to adopt or reject it, but was necessarily transferred together with the office, and was regarded by each succeeding magistrate as a Code of invariable and perpetual authority."

* *De Ortu*, &c. cap. 38. The use of the word *perpetuum* in the sense in which it is here applied in the former case is not uncommon in the best writers. CICERO, more than once, has *Oratio perpetua*. CÆSAR, *De Bello Gallico*. Lib. 7. cap. 57. *Palus perpetua*. And TERENCE in the *Hecyra*, Act. 1. Scen. 2. v. 12. makes Philotis say

"Biennium ibi *perpetuum* misera illum tuli."

In all these instances it signifies *uninterrupted continuation, within certain bounds*.

M. BOUCHAUD has thrown abundant light on the judicial law of the Romans in his *Recherches historiques sur les Edits des Magistrats Romains*, especially in that part which treats, *Des Edits des Préteurs*. Tom. 41. Mémoires de l'Académie royale.

THE

P. 20. [E]

THE connection between regal and pontifical power was not peculiar to the Roman State. It is known to have prevailed among the Germans, the Britons, and most nations of the north, and is at this day observable, we are told, in many of the new discovered Islands in the southern ocean.

Upon the first establishment of the sacred College at Rome, NUMA himself had the appointment of the High Priesthood, and it may be presumed that his successors retained the same right, though history has not afforded us any particular authority for supposing it. In the ages which followed the abolition of regal power, the nomination was for the most part in the hands of the people, assembled in Tribes, who sometimes interfered also in the election of inferior priests, which properly belonged to the pontifical college. Of both these rights they were deprived by SYLLA, who, to revenge himself of the popular party, transferred them with some other privileges
to

to the priests themselves. But in the year of the City 591, about fifteen from SYLLA's death, a law was passed to restore the people to their ancient right of election, which they soon after exercised in favour JULIUS CÆSAR, who was raised to the Sovereign Priesthood by their sole appointment." Though they appear to have been again deprived of this authority by M. ANTONIUS, yet we have certain proof that it was recovered not long after: for on the arrival of AUGUSTUS at Rome, from his Sicilian expedition, the people made him a voluntary offer of the High Priesthood, though LEPIDUS, who had been raised by the means of ANTONIUS to that dignity, was still alive. But AUGUSTUS, whose object it then was, to insinuate himself into the hearts of the public by a shew of moderation and reverence for the laws, prudently waved their offer, and was not prevailed upon to accept it, till the death of LEPIDUS. It was under the emperor TIBERIUS that the people finally lost this right of election, which from that time was transferred into the hands of the Senate,

• v DIO. Lib. 37. sub. fin. SUTTON. *in vit. Cæs.* cap. 13.

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who continued regularly to exercise it,^w till among other similar privileges it was swallowed up in the Imperial Power.

The variations which took place not only in the Character of the Sovereign Pontiff, but in the Order and Discipline of the Sacred College, after this period, are very numerous. Among others, we are told that the Emperors, when they claimed the right of nominating to all the Pontifical offices, assumed at the same time that of deciding by their sole authority in cases, which before it had always been usual to refer to the collective body of priests;^x and that this authority, which was in former times confined to the city of Rome, they extended to the remotest provinces. PLINY has given us an example of this in a letter written when he was Lieutenant Governor in Bithynia, to the Emperor TRAJAN, requesting his orders with respect to an ancient Chapel, which the inhabitants of Nicomedia wished to take down.^y Ano-

^w TACIT *Annal.* Lib. 1. cap. 15. LAMPRIDIUS has preserved an Oration of Alexander Severus, wherein he returns thanks to the Senate for having made him Augustus, *Sovereign Pontiff* and Tribune. *Vit. Alex. Sever.* cap. 8.

^x TACIT. *Annal.* Lib. 2. cap. 59.

^y Lib. 10. Epist. 58. and again on a similar subject, Epist. 73. 74. ther

ther striking difference is, that, although during the age of the republic, and for many years after, there never appears to have been more than one Sovereign Pontiff at a time, History, confirmed by Medals and Inscriptions, informs us, that under the Emperors there were many, though it cannot be clearly settled when this change was first introduced.^z

It is needless to extend this article by entering into any further detail on a subject, which has been so frequently and so ably treated. I refer my reader who wishes for particular information, to the excellent works of GUTHERIUS and BOSIUS, in the 5th Vol. of GRÆVIUS, and to some elegant Dissertations by M. le Baron DE LA BASTIE, in the 12th Vol. of the History of the Academy of Inscriptions and Belles Lettres.^a

^z The best writers seem to think it was under the Emperors BALBINUS and PAPIENUS about the year 238.

^a The title of *Pontifex Maximus* was held of such high dignity, that in Gems and Inscriptions it almost invariably takes place of every other :

CÆSAR PONT. MAX. DICT. TERT.

CÆSAR AUG. PONTIF. MAX.

CONS. QUINT.

is the common arrangement through the whole collections both of GRUTER and SPANHEIM. And CICERO in his Oration against PRISO, relating the honours he received on his return from exile, says, " Me in eâ ipsâ domo quâ tu me expuleras, "*Pontifices*, Consules, Patres Conscripti collocaverunt."

P. 25. [F]

THE circumstances which concurred to raise AUGUSTUS to the empire, and the means he used to improve them, are thus concisely given by TACITUS, in the opening of his Annals, "Postquam BRUTO et CASSIO
 " cæsis, nulla jam publica arma, POMPEIUS
 " apud Siciliam oppressus, exutoque LEPIDO,
 " interfecto ANTONIO, ne Julianis quidem
 " partibus nisi CÆSAR dux reliquus; posito
 " triumviri nomine, consulem se ferens, et ad
 " tuendam plebem tribunitio jure conten-
 " tum; ubi militem donis; populum annona;
 " cunctos dulcedine otii pellexit." The first step taken by him to secure his sovereignty over the Roman people, was the division of the provinces, and a more politic distribution could not perhaps have been devised.^b Into the hands of the Senate he insisted upon

^b In this division the SENATE held—Africa—Numidia—Asia and Greece on the continent—Dalmatia—Macedonia—Sicily—Crete—Libya—Bithynia with Pontus—Sardinia, and Bætica—

AUGUSTUS retained in Spain, the districts of Iberia—Tarraco and Lusitania—Gallia Narbonensis and Lugdunensis—Aqui-

tania—

committing all those that had already submitted to the Roman arms, and that were (from the general tranquillity and satisfaction which then prevailed among them) proper objects of civil jurisdiction. The stubborn and refractory provinces he thought it prudent to retain himself till such time as they should be brought into a more manageable state. A proposal apparently so much to his own disadvantage, was readily embraced by the short sighted Senate. They did not consider that they were placing him at the head of a large military establishment, by the prudent management of which he might at any time overawe their councils, and in the end annihilate their authority. If indeed we consider what humiliating and unconstitutional measures the Senate had already not only countenanced, but proposed in favour of Augus-

tania—Celtica and all the Country of the Rhine—Cælosyria—Phœnicia—Cilicia—Cyprus, for which and the district of Narbonne he afterwards received Dalmatia and Egypt. *DIONYS.* Lib. 53. For a general knowledge of the State of the Roman Provinces consult *CAR. SIGONIUS De antiquo jure Provincia- rum*; but for more accurate information, *F. ROBERTELLUS De Provinciis Romanorum et earum distributione atque administratione*, in the 3d Vol. of *GRÆVIUS*; a work extremely valuable both in a geographical and a political light.

tus,

tus, and its wilful blindness to so many of his overacted scenes of hypocrisy, we cannot readily conceive why he should have chosen to engage himself in dangers and difficulties to secure the possession of that which he appeared already to have so much in his power. But the salutary councils of AGRIPPA and MECÆNAS, or (what perhaps had far greater weight) the awful example of his predecessor, had warned his ambition to pursue the same object by a different route. Instead therefore of appearing to be gratified by every act of servile liberality which a temporizing set of men were ready to confer upon him, he affected, under the mask of moderation, to acquire all his dignities by legal and regular measures. Thus it happened that by a gradual accumulation of honours and offices, he was able, as Tacitus says, "*Paulatim munia Senatus, Magistratum, Legum in se tra-*" here," and with a seeming solicitude for the welfare and prosperity of the Roman State, he appears to have left at his death little more than "*Morientis Reipublicæ vestigia.*"

Perhaps the government of Rome, during the last years of AUGUSTUS, may be considered as something analogous to that of Eng-

land, at the beginning of the 17th Century, a simple and unmixed Monarchy, whose popular assemblies were thought to form only the ornament of the fabric without being in any degree essential to its existence. At least this seems to have been a prevailing idea among the best writers of those times, who describe it as "a *prerogative* government, where *Book law* in most cases yielded to *Lex loquens*, and where whatever was done by the King, with the advice of his Privy Council, was looked upon as done in fact by the King's absolute power."^c A very striking description of the principal features of Roman Polity, particularly of those new arrangements which had taken place under AUGUSTUS, between the SENATE, the EMPEROR, and the COUNCIL. There is therefore a manifest inconsistency in those writers who attempt to describe the constitution of the Roman State as immateri-ally affected by this revolution. They tell us that the image of the old republic is very discernible in the person of the Emperor;

^c RALEIGH's *Maxims of State* and his *Prerogatives of Parliaments*, p. 17, &c. LORD BACON's *Political Works* passim.

that

that as he did not profess to be, neither in fact ought he to be, considered as absolute sovereign of that mighty empire; that he held only a *temporary, delegated power*, which could be at pleasure resumed by those from whom he had received it, and that this power did not consist in his single will and authority as supreme, but was composed of the various species of duties and prerogatives annexed to the different offices in the republic, which instead of being *separately* exercised as formerly, were then *united* in the person of the emperor. But surely this very circumstance is sufficient to prove to us what was the nature and extent of his Authority, and to convince us that (however artfully glossed over) the power of AUGUSTUS was as absolute and extensive as any which the most ambitious of his successors ever enjoyed. The following remark of LORD SHAFTESBURY places this subject in so true a light and is expressed with so much elegance, that I shall make no apology for subjoining it at length. “It was the friendship of MÆCENAS, which turned a Prince naturally cruel and barbarous to the love and courtship of the *Muses*. These Tutoresses formed in their royal pupil a new nature.

They

They taught him how to charm mankind. They were more to him than his arms or military virtue; and, more than Fortune herself, assisted him in his greatness, and made his usurped dominion so enchanting to the world that it could see without regret its chains of bondage firmly rivetted. The corrupting sweets of such a poisonous government were not indeed long lived. The bitter soon succeeded: and in the issue, the world was forced to bear with patience those natural and genuine tyrants who succeeded to this specious machine of arbitrary and universal power.^d"

^d *Advice to an Author.* Part. 2. sect. 1.

P. 46. [G]

"WE cannot sufficiently admire the wisdom and goodness of Providence (says the excellent Writer on *The Use and Authority of the Roman Law in Christian Nations*) who sometimes makes the vilest instruments subservient to the noblest purposes: For it is
worthy

worthy to be remarked, that, notwithstanding the infamous lives and characters of many of the Roman emperors who preceded CONSTANTINE, their laws and constitutions are invariably framed according to the strictest rules of equity, and breathe a uniform spirit of piety and wisdom. The language also in which they are composed is concise, elegant, and full of that dignity which the various occasions required. This is no doubt to be attributed to that laudable custom (which the worst of emperors condescended to adopt) of submitting their intentions to be discussed by men skillful in the laws, and of delivering into their hands the charge of composing and publishing the Imperial Constitutions.* This was never better illustrated than in the conduct of the emperor ALEXANDER SEVERUS, who not only consigned the business of framing the laws which were to be proposed, to a certain number of the most celebrated Civilians, but even afterwards withheld his sanction from them till he had taken the opinion of his council, which was composed of none but men of approved integrity and abilities; nay he carried this cir-

* DUCK. *De usu et Auctoritate*, &c. Lib. 1. cap. 3.

cumspection

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* DUCK. *De usu et Auctoritate*, &c. Lib. 1. cap. 3.

cum inspectione

cumspection still further; for if the law to be passed had reference to military arrangements, a council was then formed of such veteran officers as were most eminent for their skill and experience, and upon their judgement solely the issue of the affair depended.

After the removal of the seat of empire there is a striking difference both in the spirit and letter of the Imperial Law. To be convinced of this it will be sufficient to compare the Constitutions of Nero, Domitian, Commodus and Caracalla with those of Martian, Leo, Zeno and Anastasius. It will be found that the latter, besides other points of inferiority, are written in an affected and verbose style and contain so little of that dignity which characterizes the former, that they might more naturally pass for the extempore flourishes of an orator than for the mature decrees of an imperial synod. From this circumstance we may conjecture was derived that general preference which since the revival of the Roman Civil Law has ever been given to JUSTINIAN'S Code. It is there alone that we meet with the excellent Constitutions of the first imperial æra: whereas the Code of THEODOSIUS, which commences with the laws of

CON-

CONSTANTINE, must necessarily be regarded as deficient in the most valuable materials, namely, the laws and institutions prior to that emperor's reign.

P. 47. [H]

“HÆC autem tria volumina a nobis composita tradi eis, tam in *Regiis Urbibus*, quam in *Berytiensium* pulcherrimâ civitate, quam et legum Nutricem bene quis appellet, tantummodo volumus : quod jam et *a retrò Principibus*, constitutum est et *non in aliis locis*, quæ a majoribus tale non meruerint Privilegium.”^f This injunction of JUSTINIAN, together with what follows, to prohibit teaching the law at Cæsarea, at the same time that it marks out the cities of ROME, CONSTANTINOPLE and BERYTUS, as the only privileged seminaries for that purpose, informs us that this was no new distinction, but had prevailed under

^f CONSTITUTIO. *Omnem reipublicæ nostræ sanctionem, &c. in Præf. Digestorum.*

former emperors.* It may not be amiss to take a summary view of this subject.

Before the establishment of a Public Academy for the study of the Law, it was usual at Rome for men of eminence to give Lectures in their private houses to the youth intended for that profession. There were others also, who, though they did not professedly teach this science, yet by reason of their consummate skill in civil matters, and the known wisdom and equity of their juridical opinions were constantly attended in their course of public business by a train of Students. "Alii
" de jure respondent, docent alii et eodem
" tempore et *discipulis* satisfaciunt et consu-
" *lentibus.*"^b The connection between CICERO and SCÆVOLA was of this nature. "Ego autem, says he, Juriscivilis studio
" multum operæ dabam Qu. Scævola P. F.
" qui quanquam nemini se ad *docendum* dabat,

* Yet, notwithstanding this, LAODICEA is expressly mentioned in a law of SEVERUS as a great resort of Students. COD. JUSTINIAN. Lib. 10. tit. 39. And AGATHIAS, Lib. 2. *De Gestis Justinian.* Speaking of the same earthquake which desolated Berytus, adds, "it extended also to ALEXANDRIA, where I myself then resided for the sake of prosecuting my law studies.

^b *De Oratore.* Lib. 1. sect. 45.

" tamen

“ tamen consulentibus respondendo, studiosos audiendi docebat.” This mode of training up young men in the study of the Laws, and of accustoming them to forensic business, was equally liberal and beneficial, and (as we have seen on a former occasion) was considered by the first characters in the State as a certain source of comfort and honour, reserved for that time of life when they should no longer be capable of other occupations.

The first regular institution of a Seminary in which the Law was publicly taught at Rome, appears to be in the reign of ADRIAN, about the year 130. This Emperor, conceiving that the usual method of acquiring legal knowledge, notwithstanding it had its advantages, was upon the whole deficient and precarious, founded an Academy called ATHENEUM, and appointed Professors in the various branches of learning to preside over the studies of the youth, who should thenceforth resort to Rome for the purpose of education. “ Cærimonias, Leges, gymnasia, Doctoresque curare occæpit, adeo quidem ut etiam ludum ingenuarum Artium quod ATHENEUM vocant constitueret.”^k

ⁱ De Claris Orat. sect. 89.

^k AUREL. VICTOR. Lib. de Cæss. ADRIAN.

To this establishment ALEXANDER SEVERUS made considerable additions, and appointed regular salaries to the different Professors. What their original number was is not certain. In the reign of THEODOSIUS we are told they amounted to nineteen, namely, three Orators, ten Grammarians, three Sophists, one Philosopher, and two Civilians; all of whom, under a severe penalty, were forbidden to give any lectures in private.¹ In the law which enjoins this, it is to be observed, the public Academy is termed *Capitolii Auditorium*. “Ex eorum
 “numero qui videntur intra *Capitolii Audito-*
 “*rium* constituti, hi omnibus modis, *priva-*
 “*tarum ædium* studia sibi interdicta esse cog-
 “noscant,” from whence some have conjectured that a seminary distinct from the

¹ Lib. II. tit. 18. COD. JUST. *De Studiis liberalibus Urbis ROMÆ et CONSTANTINOPOLITANÆ*. CASSIODORUS has given us a very liberal Epistle of ATHALARIC the Ostrogoth, in answer (as it should seem) to a complaint made by the Professors of this very Academy, wherein he insists upon their being regularly paid their respective salaries, without any deduction. “Cum enim manifestum sit Præmium Artes nutrire, nefas
 “judicavimus Doctoribus adolescentium aliquid subtrahi, qui
 “sunt potius ad gloriosa studia per commodorum augmenta
 “provocandi.” Lib. 9. Epist. 21.

Atheneum is here spoken of: But it seems most probable, as DONATUS observes, that since ADRIAN'S School is frequently called *Capitolii Auditorium*, from its situation in the Capitol, in other instances, it is also pointed out under this name in the law in question:^m and this seems to be further confirmed by considering that the public Seminary at Constantinople was sometimes called *Capitolii Auditorium* for a similar reason. Though the cultivation of juridical learning was by no means the sole, or even the principal, intention of this Academy, it is evident that to this branch of Science alone it was afterwards indebted for its celebrity. Seminaries had, even before the time of ADRIAN, been founded in various provinces of the Empire, in which every species of polite literature

^m DONATUS *De Urbe Româ*, Lib. 2. Cap. 9. The *pergulae Magistrales*, prohibited in this law, and of which we find on other occasions frequent mention, were a sort of private Schools. SUTTONIUS speaks of one L. Craffitius who, says he, “in *pergula* docuit, sed cum edoceret jam multos ac nobiles demissâ “repente *Scholâ* transiit ad Q. Septimii philosophi Sectam.” *De illust. Grammaticis*. Sect. 18.

“Sed nec structor erit cui cedere debeat omnis *Pergula*.”

Juv. *Sat.* 11. v. 136.

And VOPISCUS, in *Saturnino*. “Fuit revera non parum literatus; nam Romæ frequentaverat *pergulas* Magistrales.”

was

was successfully taught; and many laws are to be met with in subsequent periods which particularly provide for their augmentation and encouragement: One, very strongly marked, occurs in the Theodosian Code under the title *De Medicis et Professoribus*.^a It is a Rescript of the Emperors VALENS and GRATIAN to the Prætorian Præfect of Gaul; “De constituendis per omnem diœcesin in frequentissimis civitatibus, qui erudiendæ præsideant juventuti, *Rhetoribus et Grammaticis Atticæ et Romanæ Doctrinæ*.” This plainly shews us that it was by no means necessary for the provincial youth to incur the expence and fatigue of a journey to the metropolis for the more elegant branches of education;^o yet that the resort thither was very great, even in the declining state of the Empire, cannot be disputed. The fact is, that although philological studies, and every species of philosophy, might be prosecuted in the provincial Academies, it was at ROME

^a Lib. 13. tit. 3.

^o Many indeed of the richer class, we are informed, thought it necessary to reside sometime at Rome in order to complete and give the last polish to their studies, or, as it is expressed, “Ut Ubertatem Gallici nitoremque sermonis, Gravitas Romana condiret:” but this was certainly not a general custom, alone,

alone, and afterwards at BERYTUS and CONSTANTINOPLE that both the theory and practice of Jurisprudence was to be acquired. Of this the following passages from writers of the fourth and fifth centuries may serve to convince us:

SIDONIUS APOLLINARIS in an epistle to EUTROPIUS, advises him to go ROME, expressly for the purpose of studying the Law in a City which he emphatically calls *Domicilium Legum*:^p and RUTILIUS, in his *Itinerary*, says of PALLADIUS, who resided some time in Rome,

“Facundus juvenis Gallorum nuper ab arvis

“Missus, *Romani discere jura fori.*”^q

In GIANNONE'S *History of Naples* are quoted the following lines from a Life of ST. GERMAIN, of the fifth century:

Incitus his animus, talique cupidine raptus,

Qua caput est orbis terrarum Maxima Roma

Tendit iter, *Latii nodos addiscere juris,*

Et didicit, palmamque brevi tulit ille laboris.^r

^p Lib. 1. Epist. 6.

^q RUTIL. NUMANTINI *Itinerar.* Lib. 1. v. 207.

^r Ist. di Napoli. Lib. 1. cap. 10.

And

And of the same person we are told by his Biographer CONSTANTIUS, "Ut in eum
 "perfectio literarum plena conflueret, post
 "auditoria Gallicana, intra Urbem Romam,
 "juris scientiam plenitudini perfectionis ad-
 "jecit." ST. AUGUSTINE, speaking of his pupil and friend ALIPIUS, says, "Non sane
 "relinquens incantatam sibi a parentibus
 "terrenam viam, Romam processerat ut Jus
 "disceret;" and in the same chapter we are told of the flourishing state of most other kinds of learning at that time [the middle of the fourth century] in the schools of Africa.*

Many other authorities might be adduced to prove, that, after the institution of the ATHENEUM, the grand object which for some centuries drew the youth of the western provinces to the Mother City, was the study of the Law, but the foregoing may be thought sufficient.

When we consider what an immense number of Students from various nations, of different characters and conditions, were assembled together in one city, it is natural to suppose that frequent irregularities must have oc-

* Vit. S. Germ, cap. 1.

* Lib. 5. Confess. cap. 8. ST. AUGUSTINE was for some-time employed in the education of youth at Carthage, but left it,

curred which would require the interposition of law to adjust, and that some general Code of regulations for the direction of the studies and morals of the Academicians must have been compiled for this purpose at the first establishment. We have, it is true, a few scattered notices of some such regulations made as occasion required, under the different emperors. But from the nature and tendency of these, there is great reason to believe, that no uniform Code ever existed among them. Hence it happened, that in the time of the Emperors VALENTINIAN and VALENS, the disorders which, for want of proper discipline, had for many years been gradually growing up, were arrived at such a pitch of extravagance, that they called aloud for the interference of imperial authority to repress them. "Hi omnes" (says AMMIA-

it, as he informs us, because of the licentious and turbulent behaviour of the Students, which was very opposite to the character he had heard of the Roman youth. Of these however we find he soon had heavy cause of complaint: among other things, he mentions a very mean artifice much practised there. In order to avoid paying for their lectures, which it was not customary to do till the end of the course, the young men would frequently withdraw themselves a few days before the conclusion. Loc. cit. cap. 12.

138 ILLUSTRATIONS.

NUS MARCELLINUS of the Roman youth of those times) “ quod vivunt et vino et tesseriis
 “ impendunt, et lustris et voluptatibus et
 “ spectaculis; eisque templum et habitacu-
 “ lum et concio et spes omnis, Circus est
 “ Maximus.” Nor were these vices of sud-
 den growth, for we hear a writer of an ear-
 lier age complaining: “ Propria et peculiaria
 “ Urbis vitia, quæ pene in ipso utero matris
 “ concipi videntur *histrionalis favor et gladia-*
 “ *torum equorumque studia;*” to which he very
 pertinently adds, *Quibus occupatus et obsessus a-*
nimus, quantulum loci bonis artibus relinquit!”

It was with a view of restraining these ir-
 regularities, and of introducing a stricter dis-

“ Lib. 28. cap. 25. And for a further account of the cor-
 rupt state of the Academy, see the same author, Lib. 14. cap.
 6. and Lib. 28. cap. 4.

How different from this is a description given us by FOR-
 TESCUE of the morals and discipline of our own Law Semina-
 ries in his days! “ Here,” says he, “ the youth apply con-
 “ stantly to their juridical studies, and on holidays to the read-
 “ ing of the Holy Scriptures; and after the hours of divine
 “ service to the perusal of ancient chronicles. Here virtue
 “ may be said to be truly cultivated, and vice exiled, insomuch
 “ that the nobility and gentry place their children here merely
 “ from motives of *economy and good morals.*” De Laudibus
 Leg. Angliæ, cap. 49.

“ TACITUS OF QUINCTILIAN. *Dial. De Oratoribus*, cap. 29.
 cipline,

cipline, that the Emperor VALENTINIAN in the year 370 promulged that celebrated Constitution “ *De studiis liberalibus Urbis Romæ et Constantinopoleos*,* with some particulars of which my readers may not be displeased to be made acquainted.

It contains eleven distinct regulations, in substance nearly as follow : The young men who come to study at Rome are required to bring Letters Dimissory from the Governor of the province in which they live, setting forth their place of birth, their age, their qualifications, and the rank and condition of their parents. Immediately on their arrival they are to deliver these letters into the hands of the Censors, whose duty it then is, to enquire of them the line of study they mean to pursue, and to procure them convenient lodgings. The law proceeds afterwards in these words ; “ *Iidem imminere aut Censuales, ut singuli eorum tales se in conventibus præbeant, quales esse debent, qui turpem, inhonestamque famam et confociationes (quas proximas putamus esse criminibus) æstiment fugiendas ; neve Spec-
tacula frequentius adeant ⁊ aut adpetant vulgò*

* COD. THEODOS. Lib. 14. tit. 9.

⁊ Many other restrictive laws are to be found upon this subject

"intempestiva convivia." Quinetiam tribuimus
 "potestatem, ut si quis de his non ita in
 "urbe se gesserit, quemadmodum liberali-
 "um rerum dignitas poscat, publice verberi-
 "bus adfectus, statimque navigio superpo-
 "situs, abjiciatur urbe, domumque redeat."

—The Emperor then prescribes the time which he thinks necessary for the completion of their studies; this he limits to their 20th year. Whereas at BERYTUS the Students were permitted to continue till their 25th; and there is an express Edict of Dio-

ject in the THEODOSIAN CODE, especially Lib. 14. tit. 2. *De Rectoribus Provinciæ*, and Lib. 15. tit. 5. *De Spectaculis*. See also the latter part of LIBANIUS's Oration *Περὶ τῶν δισμάτων*, addressed to the Emperor Theodosius.

* These injunctions remind us of the following lines in PETRONIUS.

"Artis severæ si quis amat effectus
 "Mentemque magnis applicat, prius amore
 "Frugalitatis lege polleat exactâ,
 "Nec curet alto Regiam trucem vultu,
 "Cliensque cœnas impotentium captat;
 "Nec, perditis addictus, obruat vino
 "Mentis calorem, neve plausor in Scenâ
 "Sedeat redemptus, histrioniæ addictus."

Satiricon, p. 18.

An Inscription which might with great propriety be placed over the portal of many of our modern Academies.

CLESIAN

CLETIAN to this purpose, which JUSTINIAN appears to have thought the more reasonable of the two, and has admitted it into his Code.^a It is also agreeable to the opinion of the best civilians: "For," says ULPIAN, "I do not think that a young man can with any advantage, either to himself or others, enter into public life, or engage in any profession, before his 25th year."^b

After some regulations of less consequence, the Emperor in the last clause enjoins the Præfect of the City to keep a monthly register of the conduct and proficiency of every Student, and to send it annually for his inspection, in order that he may form a judgment of their respective merits, and be enabled to select out such as are fittest to succeed to the different offices and departments of the state.^c

Such is the general outline of this celebrated Law, which being sanctioned by no less authority than that of the Prince himself, could hardly fail of producing the intended

^a Lib. 10. tit. 49. De iis qui ætate et professione se excusant.

^b De Muneribus et Honoribus, Lib. 8.

^c It is with a view to this noble object that JUSTINIAN concludes his preface to the Institutes.

reformation.

reformation. It is rather remarkable that the compilers of JUSTINIAN'S Code have not admitted it into that work, especially as there are frequent references to regulations of this nature.^d The reason perhaps might be, that it appeared to them a provision against some temporary disorders, which, as they no longer subsisted, the law would at that time be without meaning or effect; but this, as GOTHOFRED observes, was a very insufficient cause for rejecting it: "Aliis enim temporibus et occasionibus, hac etiam ætate utiliter aptari possit."^e

This reason seems probable since Justinian in the prefatory letter to Tribonian prefixed to the Pandects § 10 orders "Sed et si qua leges in veteribus libris profusa, jam in defectu inveniunt: nulli modo veritas eadem ponere permittimus: ut"

While ROME was thus regarded as the most flourishing Academy in the western Empire, and the only one set apart for juridical studies: BERYTUS, or BEROE (as it is frequently called) a city in Phœnicia, was held of equal reputation in the East. At what time it was founded is not certain. NONNUS of PANOPOLIS, a writer of the fifth century, in his *Dionysiaca*, declares Sa-

^d Lib. 1. tit. 17. *De veteri jure enucleando*, and a Law of VALENTINIAN, bearing the same title with this. Lib. 11. tit. 18.

^e There is an excellent Commentary upon this Law by HERMANNUS CONRINGIUS, in the third volume of DE SALENGRE'S *Supplement to GRÆVIUS*. And also in J. GOTHOFRED'S Edition of the Theodosian Code.

turn to have been the founder; and speaks of it as the most ancient city upon earth—*πρωτοφανης Βερση*^f. He tells us also, that as early as the days of AUGUSTUS, it was a celebrated Seat of Jurisprudence,

———*Δικης πεδον*

ΑΣΤΥ ΘΕΜΙΣΩΝ^g ———

and proceeds to lavish upon it every epithet and expression of praise, calling it

*Ενδιον Ευφροσυνης, Παφης δομος, οικος ερωτων,
Αστρον αρουρης—χαριτων θαλος.*^h

MENAGE, in his *Amœnitates juris civilis*, says that GREGORY THAUMATURGUS, who lived near the middle of the third century, is the earliest writer who makes any mention of Berytus as a Seminary of Law. It is in his *Panegyric Oration of ORIGEN*, where he tells us, that being animated with an ardent desire of studying the Roman Law, he set out for that purpose to BERYTUS, a great and

^f Lib. 41. v. 69. et 85. This is also the opinion of STEPHANUS OF BYZANTIUM. Vid. *περι πολων*, artic. Byzant.

^g Ut sup. v. 360.

^h Lib. 41. passim. This city was called by Augustus *Julia Felix*. “BERYTUS, colonia quæ *felix Julia* appellatur.” PLIN. *Hist.* Lib. 5. c. 20. Its present name is BARUT. It stands upon the coast about 16 miles N. of Sidon, but retains no trace of its ancient splendour, except the striking beauty of its situation. MAUNDRELL’s *Journey from Aleppo to Jerusalem*, p. 38, &c.

flourishing

flourishing seat of learning.ⁱ Diocletian's Edict, which was addressed in the year 287 to the Law Students in Arabia, who dwelt at BERYTUS, is a further testimony of its celebrity at that time. A Geographer of the fourth century speaks of it as a delightful city, abounding in schools of juridical learning, whose students go forth to dispense justice over the provinces, and to preside at the various tribunals of the empire.^k The singular mark of favour which it received a few years after from the Emperor VALENTINIAN, is strongly expressive of its dignity and consequence. The law which confers the favour is comprized in the following terms: "Propter multas justasque
 " causas *Metropolitano* nomine ac dignitate
 " civitatem BERYTUM decernimus exornan-
 " dam, jam suis virtutibus coronatam. Igi-
 " tur hæc quoque *Metropolitanam* habeat dig-
 " nitatem. TYRO nihil de jure suo derogetur.
 " Sit illa mater provinciae majorum nostrorum
 " beneficio; hæc nostro; et utraque dignitate
 " simili perfruatur.^l" In the following cen-

ⁱ In *Panegy. ad Orig.* p. 14.

^k *Vetus orbis descriptio, sub Constantio et Constante*, cap. 17, sect. 3. first published by J. GOTHOFRED, with notes and illustrations at the end of his edition of LIBANIUS.

^l COD. JUSTINIAN, Lib. 11. tit. 21. De Metropoli Beryto.

tury we find it very honourably mentioned by JUSTINIAN, who styles it "Civitas pul-
 "cherrima et nutrix legum;" he moreover
 paid it the compliment of calling in DORO-
 THEUS, one of its professors, to assist in his
 celebrated compilation.^m It was not long af-
 ter this period that the glory of this City
 was almost extinguished by a disaster which
 AGATHIAS records in the following man-
 ner: "At this time a terrible earthquake laid
 "waste many parts of the empire. Among
 "the rest BERYTUS, the most beautiful City
 "of Phœnicia, (εγκαλλωπισμα φοινικης) was so
 "miserably desolated that scarce any traces
 "remained of all those magnificent edifices
 "for which it was so much admired. Not
 "only a vast number of the natives perished,
 "but many noble and illustrious youths, who
 "had resorted thither for the purpose of
 "studying the Roman Law, were buried in
 "the ruins. They who escaped, together
 "with many of the professors, retreated to

In consequence of this singular privilege, we find many laws in
 the Codes bearing a double subscription. Thus in the Law
De Tyronibus, Lib. 7. tit. 13. COD. THEODOS. the subscription
 runs, "Dat. Tyro Metropoli, P. P. Berytto. It was first made
 known at TYRE, but afterwards promulged at BERYTUS.

^m In Præfat. Digest.

T

" Sidon,

“ Sidon, a city in the neighbourhood, and
 “ there continued to prosecute their studies
 “ till BERYTUS was restored. This was ac-
 “ complished a few years after, but in a man-
 “ ner very inferior to its former state” The
 discipline and studies of this Academy appear
 to have been entirely on the plan of the other
 two, except, as we are told, in having four
 Professors of Law, who delivered their lec-
 tures in the greek language,^o whereas at ROME
 and CONSTANTINOPLE there were two only,
 and they read in latin.

The public Seminary at CONSTANTINO-
 PLE cannot boast of equal antiquity with
 those of ROME and BERYTUS, nor does it
 appear ever to have been so universally cele-
 brated. As early as the year 332, CONSTAN-
 TINE had opened a road to some literary
 establishment of this nature, by founding a
 public Library in his new metropolis. This
 foundation was soon after considerably aug-
 mented and improved by the Emperors CON-

ⁿ AGATHIAS, *Hist. Gest. Justinian.* Lib. 2. p. 4.

^o GOTHOF. *Prolegom. ad cod. Theodos.* STEPHANUS of BY-
 ZANTIUM says that the celebrated SANCONIATHON was a native
 of Berytus, but SUIDAS, and after him L'Abbé BANIER, fixes
 his birth-place at Tyre.

STANTIUS and JULIAN; and in the year 372, by a law of VALENS, seven officers of approved skill in the greek and latin languages, were appointed to superintend the library, and to repair and transcribe the books.^p Notwithstanding this apparent zeal for the interest of learning, we have no reason to believe that any Academy, instituted and regulated by public authority, was known in this city for half a century from the period last mentioned.^q The earliest account of such an establishment is to be found in a law of the younger THEODOSIUS, A. D. 425.^r It opens with a severe prohibition against ex-

^p DU FRESNE. *Constantinopolis Christiana*, Lib. 2. p. 149. 150. COD. THEODOS. Lib. 14. tit. 9. *De Antiquariis*, &c. The term *Antiquarius*, or ἀρχαιογράφος, is frequently used in this sense by ancient authors. It is, says GOTHOFRED, in his comment on this law, one “qui codicibus componendis vel pro vetustate reparandis vacaret.”

^q It may be urged that VALENTINIAN's Law, A. D. 370. *De Studiis liberalibus*, &c. COD. THEODOS. Lib. 14. tit. 9. necessarily supposes the existence of a public Academy at that time in Constantinople. That Students resided there cannot be doubted, but there is no reason for concluding them classed under any regular establishment, especially as many expressions in the law seem to imply the contrary.

^r COD. THEODOS. Lib. 14. tit. 9. L. *De professoribus qui in Urbe Constantinopolitana*, &c.

exercising the office of teacher or professor of any Art or Science in a private manner, with a particular exception, however, in favour of such as confine their instructions to one family, in which they may receive a certain salary as private tutors. The penalty annexed to the infringement of this injunction is nothing less than immediate expulsion from the City.* The next clause in this law regulates the number of public professors in each separate science, the whole establishment amounting to thirty-one; and here we may observe, that in settling this matter the Emperor seems to have bestowed a peculiar mark of distinction upon the professors of Philosophy and Law, for having named all the others in a cursory manner, he concludes, “ Et
 “ quoniam non his artibus tantum adolescen-
 “ tiam gloriosam optamus institui, *profundio-*
 “ *res quoque Scientiæ atque Doctrinæ, me-*
 “ *moratis magistris, sociamus Auctores. U-*
 “ *num igitur adjungi ceteris volumus, qui*
 “ *Philosophiæ arcana rimatur; duos quoque qui*

* GOTHOFRED observes that a restriction of this sort might have been usefully adopted in most Academies in his time: for I myself, says he, know of certain law Professors “ qui locis
 “ nonnullis jurisprudentiam *cauponantes*, et Academias et Au-
 “ ditoria desolavêre.”

Juris ac Legum Formulas pandant." The third and last clause in this Law assigns to each Professor an *Auditorium*, or separate School in which he is to deliver his lectures, in order to prevent any interference between the different classes."

Such was the original establishment of this third Academy, set apart by Imperial Authority for the study of the Roman Law. And here it may not be amiss to take some notice of the manner in which this study was usually prosecuted.

The young men, during their first year, were confined to some book of general Principles, the Institutes, for example; or were admitted, as it is said, merely "ad limina legitimæ scientiæ," by going through the four first books of the Digests. While thus engaged, they were stiled *Dupondii*,) students of small consideration) till JUSTINIAN substituted *Justiniani novi*, as a more encouraging appellation. The next year was employed in

¹ Loc. cit.

² DU FRESNE supposes the *Capitolii Auditorium* at Constantinople to be the same with what was afterwards called the *Basilica*, and quotes in proof of it an Epigram in the 4th book of the Anthologia, cap. 23. which has for its title—
ΕΙΣ ΤΗΝ ΒΑΣΙΛΙΚΗΝ ΤΩΝ ΠΑΙΔΕΥΤΗΡΙΩΝ ΕΝ ΒΥΖΑΝΤΙΩ.

reading

reading though the second and third Parts of the Digests, from the fifth to the twentieth book, which, consisting principally of Prætorian Law, occasioned the Students to be called *Edictales*. In the third year they continued their progress through the fourth Part of the Digests from the twentieth to the twenty-eighth book; and for a very obvious reason were during that time called *Papinianistæ*, “*Quo nomine,*” says HEINNECCIUS, “*adeo sibi placebant, ut diem quo ejus doctrinâ primum fuerant initiati, festum solennemque haberent.*” The remaining twenty two books occupied the fourth year of their studies, and being then considered capable of *solving* any question of Law, they acquired the name of *Lytæ*.

“*Qui juris nodos, Legumque ænigmata solvunt.*”

Another year however was usually added, in which they were admitted to read the Code, and whatever books of law they should think necessary; and they then terminated their studies with the title of *Prolytæ*. JUSTINIAN goes so far as to assert of those who have properly employed their time during this five years course, “*Nihil eis legitimæ Scientiæ deerit, sed omnem ab initio usque ad finem*
fuis

fuis animis amplectantur.^w” This system of education appears to have been preserved with very slight variation for many years, and was adopted upon the revival of the Science in most of the Academies in Europe.^x

If by this desultory sketch of a very curious subject any of my readers shall be induced to consider it more minutely, they will find at every step some fresh source of valuable information opening upon them. Of this I am convinced, that there are very few points of more pleasing investigation, or which, properly treated, would be more interesting in the annals of Literature, than a complete *History of the Discipline and Studies of the Academies of the Ancients*.^y

^w The whole of this subject may be seen at large in the Constitution, *Omnem reipublicæ nostræ sanctionem*, prefixed to the Digests.

^x This *Quinquennale studium Juris* was not overlooked by the Compilers of the Statutes in our own Universities. “Quod-
“que per Biennium in Academiâ, Dialecticæ, Morali Philo-
“sophiæ, et Politicæ, aliisque Humanioribus Literis incum-
“bat, priusquam *Quinquennium* in studio juris ponere incipiat.”
Corpus Statutorum Univ. Oxon. Tit. 6. §. 4. The CAMBRIDGE Statute requires of the Student only twelve months application to the Institutes to prepare him for entering on his five years Course of Civil Law.

^y EGASSE DU BOULAY, in his celebrated History of the University of Paris, has proved to us how interesting such a work

P. 47. [1]

THE second and third centuries of the Christian æra have been celebrated for forming the brightest period of Roman Jurisprudence. In the time of CICERO, it is true, the study of the Law appears to have been more generally cultivated, and the learned opinions of that age were perhaps, in point of wisdom and equity, never excelled. It is observable, however, that while the most polished language was adopted on every other subject, Jurisprudence alone retained much of its original stiffness and barbarism. Towards the age of the ANTONINES a very considerable reformation took place in the style of the Law, and from this time the works of the civilians are characterised by a peculiar elegance and precision.^z

work may be made. In his first volume he has treated *De Regimine et Studiis veterum Academiæ*.

^z There is a good Dissertation on the *Language of the Digests* by GASP. KIRCHMAIER, to which, he says, the two following verses in TAUBMANN's Epigrams first gave rise.

"Credo ego si Linguæ Ciceronis imago perisset
"E Juris posset corpore restitui."

It

It was this, no doubt, (notwithstanding what some *Antitribonianists* have asserted) which particularly recommended them to the attention of TRIBONIAN and his associates, and obtained them the preference over the writings of the older Jurists. These latter, form a very small part of the Digests, whereas, there is scarcely a book in which the principal titles are not compiled from the Works either of PAPINIAN, PAULUS, ULPIAN, or some other lawyer of the second and third centuries.^a

Of some of these Civilians nothing remains but their names, and the titles of their works; and even of the most eminent among them the memorials are very scanty. To pass over many of less note, whose history the curious reader may learn from what FABRICIUS has compiled in his *Bibliotheca Græca* and *Latina*,^b I shall confine myself to a

^a It has been generally supposed that the original works of the old Lawyers were destroyed by order of JUSTINIAN, as soon as his compilation was completed. See GRAVINA *De Ortu*, cap. 132. JO. JAC. WISSENBACHIUS, *Emblemata Triboniani*, p. 9. LUD. VIVES, *De causis corruptarum Artium*, Lib. 7.

^b Lib. 6. cap. 6. *Index Jurisconsultorum veterum Pandectis Florentinis præmissus*, with the two supplementary sections: and again, *Bibliotheca Latina*, Lib. 4. cap. 9.

short account of two or three of the most remarkable characters.

PAPINIAN was the confidential friend, and by marriage a relation of the Emperor SEPTIMIUS SEVERUS, who, as a testimony of his esteem, created him Prætorian Præfect, and at his death left him guardian to his two Sons, GETA and CARACALLA.

Though the fact rests solely upon the testimony of DION CASSIUS, yet as he was a contemporary writer, it has been thought sufficient to establish the opinion that PAPINIAN accompanied SEVERUS and his sons to BRITAIN, and presided for sometime in the tribunal at *York*. The passage from which this inference has been drawn is to this effect: "The Emperor and his sons being
"at York, CARACALLA, following close
"behind his father, is observed to draw his
"sword secretly, with a design as was supposed to kill him, but is prevented by the
"soldiers. SEVERUS summons him before
"the presence of the army, and with great
"composure laying the weapon on the
"ground, bids him, if he wishes for his
"death, to kill him on the spot; but if
"you dare not strike with your own hand,
"(adds he) here is your *Præfect* PAPINIAN,
"give

“give but the word and (as you are his Sovereign^c) he must obey your order.”^d”

It was the cruel and implacable spirit of CARACALLA which afterwards proved the source of PAPINIAN's ruin: for, agreeably to the trust reposed in him, the Præfect thought it his duty, if possible, to reconcile the young Princes, who had long been at enmity, but his tenderest remonstrances had no effect on the unfeeling heart of CARACALLA; on the contrary he conceived the most ungenerous suspicions of PAPINIAN, and determined by the advice of his creature MACRINUS, to take an opportunity of getting rid of so troublesome a monitor. This soon offered; for having put his brother GETA to death, he called upon PAPINIAN to justify the act in a public oration. Shocked at the proposal, this illustrious man, with

^c It must be observed that CARACALLA was left by his father, as *Sovereign* in Brittain a few months before.

^d DION. Lib. 79. The fact is supported by CAMDEN and the learned SELDEN. The latter is of opinion that both ULPIAN and PAULUS were also in this island, and that the Roman Law prevailed here about 360 years; i. e. from CLAUDIUS A. D. 50. to the reign of HONORIUS, A. D. 410. when Rome was sacked by ALARIC, *Dissert. ad Fletam.* cap. 4. See also DR. DUCK. *De Ufu et Auctoritate*, &c. Lib. 2. cap. 8.

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great warmth refused to attempt a palliation of so atrocious a crime, at the same time declaring “Non tam facile Parricidium excusari posse, quam fieri.” Upon this the incensed tyrant ordered both the Præfect and his unoffending son to immediate execution.^e

It has been supposed, upon the authority of two very doubtful inscriptions,^f that PA-

^e Dio. Lib. 77, 78. SPARTIAN. *in Caracalla*. GRAVINA considered the Catonian virtue of this Prince of Jurists (as he terms him,) a proper subject for the stage, and has composed a Tragedy called by his name, which turns on the circumstance of his death, as related above.

That GRAVINA's Dramatic Works are not very generally known is no loss perhaps to his reputation; for this elegant Critic and Civilian (to judge from the few specimens he has given us) seems by no means to have possessed the talents requisite for this species of composition.

^f A Silver Urn is said to have been found at Rome about the middle of the 16th Century, with the following inscription,

ÆMILII PAPINIANI. J. C.
PRÆFECTI PRÆTORIO
REQUIESCUNT HIC OSSA
CUI
INFELIX PATER ET MATER
SACRUM FECERUNT
MORTUO
ANNO SUE ÆTATIS
TRICESIMO SEXTO.

There is also another inscription nearly to the same purpose, but the antiquity of both has been very much doubted.

PINIAN

PINIAN was only in his 36th year at the time of his death; but this cannot be thought very probable, if we consider the offices he bore and the high reputation he had enjoyed under the former emperor. CUIACIUS tells us, it was usual to refer the decisions of doubtful and intricate cases to this lawyer, whom he styles "*Asylum juris et legalis doctrinæ.*"^g ST. JEROME (says GRAVINA) does not hesitate to mention PAPINIAN with ST. PAUL, "Eundemque locum PAPINIANO tribuit in humano jure quem habet PAULUS in Divino,"^h and BALDUIN in the same high strain of Panegyric, thanks Divine Providence for having raised up for the preservation of justice and the general good of mankind, such characters as JOSEPH, DANIEL, PERICLES and PAPINIAN.ⁱ We have already had occasion to mention that it was usual in the Law Academies for the students to make great rejoicings upon obtaining the title of *Papinianistæ*; a circumstance much to the honour of this civilian, especially when we are told it was not considered as a mere youthful frolic, but as a festival instituted and sanctioned by im-

^g *In Papinian. in princip. p. 32.*

^h *De Ortu, &c. cap. 99.*

ⁱ *In Comment ad Instit. in Præfat. p. 4.*

perial authority :^{*} Nor will it seem surprizing that the first introduction to the reading of PAPINIAN was a cause of so much joy, if we recollect the terms in which he is always mentioned by the compilers of the Digests ; and that the emperor himself confesses he is indebted to him for the most brilliant parts of his work.¹

In the same age with PAPINIAN flourished DOMITIUS ULPIAN, by birth a Syrian, the Tutor, Secretary and Friend of ALEXANDER SEVERUS, by whom he was also appointed Prætorian Præfect. Such was the deference which the Emperor paid to the opinions of this lawyer, that according to LAMPRIDIUS, the Roman world might be said to have been governed for many years by his Councils. Many excellent laws were framed by his suggestion, particularly some which regulated and augmented the public revenue, nor can we hesitate to ascribe to him that superior dignity and wisdom which characterize the

^{*} CONSTITUT. *Omnem Reipub.* &c. §. 3.

¹ Loc. cit. §. 4. For further particulars of the Life and Writings of PAPINIAN, I refer the reader to a work of EVERARD OTTO on this subject. Lugd. Batav. 1718. And to an Oration of JAC. LECTIUS. There is also a Life of PAPINIAN by WESENBECH.

Consti-

Constitutions of SEVERUS. In short the happy effects of his administration were so generally felt that, but for some few objectionable points, there would be no reason to regret the influence he held over the Emperor's conduct.^m It is reported of CONSTANTINE THE GREAT, that he enquired of LAMPRIDIUS, how it happened that ALEXANDER being a foreigner and an unexperienced youth when he became possessed of the empire, conducted himself with so much prudence and moderation, whereas most of his predecessors had disgraced the Purple by their cruelties and extortions. To this he is said to have replied, "that the Roman world was indebted to the integrity and wisdom of ULPIAN for this happy disposition of its Prince."ⁿ There is, no doubt, great truth in the Historian's answer, yet it must be observed that ULPIAN's conduct is not altogether unimpeached. We are told, it was by his advice that many of those severe Edicts against the Christians, which had long been dormant, were revived, and that he still further excited the spirit of persecution, by publishing a work

^m LAMPRID. *in vit. Alex. Severi*. Lib. 24.

ⁿ ULPIANUM Præfectum Prætorio et Parentem suum appellat, Loc. cit.

on the Duty of a Proconsul, in which all those bloody Edicts were collected together. From this latter charge many able writers have laboured to exculpate him, and not without success.^o The former seems never to have been disputed. We may conjecture that the Emperor himself, both from the principles in which he had been educated, and from a known respect which he had for his mother, must have been naturally well disposed towards the Christians. There are indeed some who assert that he actually embraced the true faith on his expedition against the Persians: But whatever may have been his religious sentiments in the former part of his reign, it is clear from his conduct afterwards, that the arguments of his favourite Counsellor had greater weight with him than either the example of MAMMÆA, or the reasonings of the KING of EDESSA, who is said to have been the author of his Conversion.^p The death of ULPIAN,

^o GUL. GROTIUS. *De Vitis Jurisconsultorum*. Lib. 2. cap. 10. The accusation is said to rest solely on a passage in LACTANTIUS, who speaks of one DOMITIUS as the Author of such a work in *seven* books, but ULPIAN's is known to have been written in *ten*.

^p LAMPRID. *Loc. cit.*

like

like that of PAPINIAN, was violent and premature. He fell a sacrifice to the jealousy of the Prætorian Camp, A. D. 228. With respect to his literary character, it is summed up in the following manner by GRAVINA :

“ His style is smooth and pleasing, yet at the same time not without sufficient strength and dignity. His faculty of discrimination and definition is very great, and in his choice of words he is really wonderful ; indeed he was so extremely scrupulous in his phraseology, that he acquired the appellation of *Collector of subtleties*—*Collector Spinarum*.” Yet with all his learning and political wisdom, if we take the whole of his conduct in one view, it will be difficult to decide whether from his improvement of Human Law, or his opposition to Divine, he should be considered as a friend or an enemy to his countrymen.¹

¹ *De Ortu*, &c. cap. 100. There is an Oration by JAC. LECTIUS upon the Life and Writings of ULPIAN. His *Fragments*, in 19 titles, are published in the *Corpus Juris Civilis*.

It must be observed that, notwithstanding ULPIAN's accuracy in his choice of words, he was not always very exact in his definitions: that of the *Law of Nature* in particular, DIG. Lib. 1. tit. 1. §. 3, is very objectionable. It has been much commented upon, but never perhaps in a more agreeable or scholarlike manner than by Dr. J. TAYLOR in his *Elements of Civil Law*, p. 111, &c.

JULIUS PAULUS, a native of Padua, was contemporary with PAPINIAN and ULPIAN, and seems to have risen by nearly the same steps to equal honours: for having acted as an Assessor with them, he was afterwards created principal Secretary, and in the end Prætorian Præfect, to ALEXANDER SEVERUS. Notwithstanding the near equality of their years, LAMPRIDIUS informs us, that the two last mentioned lawyers were scholars of PAPINIAN. A fact which, though disputed by many, GRAVINA thinks very probable; "for it is certain (says he) that while
 " they were his fellow students, they always
 " paid the same deference to his opinions
 " and councils, as scholars do to those of
 " their Master; *et si non ætate ejus discipulos voluntate tamen fuerunt et cultu.*^r As a writer, PAULUS is thought to excel ULPIAN, and even PAPINIAN himself, in dignity of style, as he certainly did in the universality of his genius; for there was scarcely a point of Law upon which he had not treated. There is one circumstance wherein he differed very materially from his contemporaries. It was a prevailing fashion among the Jurists of that age to allow themselves great latitude

^r GRAVINA, ut supra, cap. 98.

in their interpretations and opinions, without much regard to Precedents; PAULUS, on the contrary, was remarkable for his rigid conformity to the strict letter of the law.*

Under this celebrated Triumvirate, the Roman Law arrived at its highest perfection, both as a Profession and a Science, and from this period it appears, with few exceptions, to have been in a gradual decline till the age of JUSTINIAN. It is with great justice, therefore, that GRAVINA calls the works of MODESTINUS (a pupil of ULPIAN) the expiring accents of Juridical wisdom. HERMOGENES, and many others, who flourished in the succeeding age, did not attempt to extend the boundaries of the Science, but contented themselves with traversing the paths already explored; and in this they would certainly have been commendable, if, instead of perplexing (as they often did) the obvious sense of the Laws by sophistical reasonings, they had employed their talents in illustrations and arrangements of such parts of Jurisprudence as even then must have become obscure and inconsistent. We may further ob-

* GRAV. ut supra.

serve of those times, that the venerable privilege of establishing precedents upon the opinions of the learned was entirely obsolete. Instead of accustoming themselves, as was formerly the case, to deliver their own sentiments upon disputed questions, the most eminent Civilians of the fifth century were content to retail the decisions of preceding Jurists, and from being regarded as *Oracles*, became in the end mere *Teachers* of Law.¹

¹ The Catalogue of POMPONIUS contains an account of all the great Lawyers from the foundation of the City, but more especially from TIB. CORUNCANUS, A. U. C. 500, to SALVIUS JULIAN, A. D. 136. For a very satisfactory account not only of these, but of all such as lived before the 6th century, together with their works, consult SCHULTINGII *Jurisprudentia vetus ante-Justiniana*. And GUL. GROTIUS, *De vitis Jurisconsultorum*.

P. 48. [K]

THE state of the Roman Civil Law during the 5th and 6th centuries in those parts of the Empire which were then invaded and settled by the barbarians of the north, has
been

been very variously described. According to some writers its authority was acknowledged and appealed to, upon all material occasions, through the whole of that period; it was incorporated with, and in many instances superseded, the customs and institutions of the invaders, and may at this day be traced in all those Gothic compilations which finally arose upon its ruins. Others again are of opinion that for a time the Roman Law was totally extinguished in the West; that under some few of the Gothic Kings indeed it enjoyed a feeble existence, but cannot properly be said to have revived after the death of THEODOSIUS; nor do they think that much stress should be laid upon any arguments drawn from the great resemblance of many parts of the Roman and Gothic Codes; because this is principally discernible in passages which contain such obvious maxims of policy as must naturally occur to a prudent Legislator of any age or country. The truth perhaps may be discovered between these opposite opinions.

There can be no doubt that the admirable œconomy of the Roman Law must have been peculiarly striking to the barbarian conquerors.

querors. A people accustomed to an unsettled mode of life, inhabiting countries remote from each other, and who were for the first time collected together in one vast body in a foreign land, cannot be supposed to have possessed materials of their own, sufficiently extensive to form the basis of any regular political establishment; or if they had, it is not probable they would easily have agreed among themselves upon proper measures for arranging them. It was therefore very natural for them to adopt, upon frequent emergencies, the laws and institutions which they found established in the conquered country; yet not so entirely to the exclusion of their own peculiar customs, but that upon a variety of occasions they would prevail over every other consideration. The following facts may serve to throw some further light upon this subject.

The time which elapsed between ALARIC's Invasion and his death^u was too much occupied in schemes of future conquest to leave that Leader sufficient leisure for executing any evil designs against the Roman Laws. That their authority should be sus-

^u From A. D. 408 to 412.

pendent

pended during that period was the least mischief that could befall them : It was indeed a natural effect of that general confusion which prevailed : but this was the only evil ; for it does not appear that they fell under any formal proscription, or were supplanted by any other laws. The danger which threatened them upon the succession of **ATAULPHUS** was much more alarming. The total extirmination of the Roman Government, and the foundation of the Gothic Empire upon its ruins, were projects which this Prince, by his own confession, had formed in the early part of his reign. Fortunately however, by the intercession of his wife **PLACIDIA**, the storm was diverted, and **ATAULPHUS** not only abandoned his scheme, but (as a proof of the sincerity of his conversion) published an Edict at Narbonne, in which he re-established the impaired authority of the Roman Laws, and bound his subjects to an exact observance of them.^w The tranquillity which ensued upon the evacuation of Italy by the Goths,^x and the measures adopted to

^w **OROSIUS**. Lib. 7. cap. 43. **MELCHIOR GOLDASTI** *Constitutiones Imperiales*, tom. 3. p. 586.

^x A. D. 412.

repair

repair the ill effects of their administration, revived for a time something like the ancient spirit of the Constitution. How much the seasonable attention of THEODOSIUS and VALENTINIAN contributed to this, is too well known to be insisted upon in this place.^y Let us therefore turn our attention to another point. In the southern Provinces of Gaul, during the last years of HONORIUS,^z the Visigoths had confirmed their settlements, yet, from their intimate alliance with the court of ROME, and from a veneration for the laws, they still submitted to the government of the Emperor's Præfects and Proconsuls, and were besides about this time governed by THEODORIC the younger,^a a prince who, in consequence of a very liberal education, and the example of his amiable tutor, had conceived an uncommon attachment to the Roman Law, the study and practice of which was generously encouraged during his reign. SIDONIUS APOLLINARIS enters into a very minute detail of THEODORIC's per-

^y See CHRONOLOGICAL VIEW, p. 43, &c.

COD. THEODOS. Lib. 11. tit. 28. l. 7.—Lib. 13. tit. 11. l. 12.—Lib. 15. tit. 14. l. 14.

^z A. D. 420.

^a A. D. 453.

son,

son, character and mode of life and speaking of his court, says, "Videas ibi elegantiam
 "græcam, abundantiam gallicam, celeritatem
 "italam, publicam pompam, privatam dili-
 "gentiam, regiam Disciplinam.^b He informs us also that he attempted to model the whole system of Polity after the fashion of Imperial Rome even in the minutest particulars, that he revived the original names of several of the Magistracies and re-established many of the ancient tribunals. In another work the same writer introduces him as addressing his Tutor AVITUS in the following lines.

" Mihi Romula dudum
 Per te Jura placent, parvumque ediscere jussit
 Ad tua verba Pater, docili quo prisca Maronis
 Carmine molliret Scythicos mihi Pagina mo-
 res.^c"

And in conformity with these humane sentiments, it appears in the course of this Poem, that THEODORIC through his whole life, discovered not only a reverence for the Laws and Manners of Rome, but a taste also for the works of her best writers and an eager

^b Lib. 1. Epist. 2.

^c Panegyric. ad AVITUM. carm. 7.

attachment to every elegant and liberal pursuit.^d

Upon the death of THEODORIC, the Goths, who, having no written Code of their national laws, had hitherto been governed either by traditional customs or (since their establishment in the provinces of Narbonne and Aquitaine) by the Roman Law, received in his successor EURIC a legislator of their own. "Sub hoc rege Gothi legum instituta *scriptis* habere cœperunt; nam antea, tantum *moribus et consuetudine* tenebantur."^e The first care of this Prince was to gain over to his interest the principal officers in the provinces, who were to oppress and impede by violence and fraud the execution of the Roman Laws, and to bring the established tribunals into contempt by setting over them corrupt judges. SERONATUS, Præfect of Gaul, a man of considerable influence, became entirely devoted to his interest. His

^d From a great similarity in their characters this Prince is frequently confounded with THEODORIC the OSTROGOTH, who afterwards reigned in Italy; and in consequence of this error, the Epistle I have quoted from SIDONIUS is to be found in some editions of CASSIODORUS.

^e ISIDORI *Chronicon Gothorum*. p. 13. SIDONIUS. Lib. 8. Ep. 3. 9.

treacherous artifices are strongly represented by SIDONIUS, who emphatically calls him the *Cataline* of his age, and describes the pernicious effects of his conduct in the following words, “Exultans Gothis, insultans Romanis, illudens præfectis, colludensque numerariis, Leges Theodosianas calcans, *Theodoricianasque* proponens, veteres culpas, nova tributa perquiri,” by the assistance of this man, EURIC was enabled to abolish the authority of the Roman Laws in favour of his new Code, and by this step to become the *Founder of Gothic Jurisprudence*. It has been much disputed what we are to understand by the *Theodorian* Laws in this passage of SIDONIUS. We cannot suppose that it refers, as some have conjectured, to any Code of his two predecessors, the latter of whom in particular we know to have been remarkably attached to the Roman Laws. The most probable opinion seems to be that EU-

^f Lib. 2. Epist. 1. In another place he says of EURIC, “Modo per promotæ limitem fortis, ut populos sub armis, sic frænat arma sub legibus.” Lib. 8. Ep. 3. See also Lib. 7. Ep. 1—6. and Lib. 8. Ep. 9. where, in a Poem which he sends to his friend LAMPRIDIUS, he very figuratively describes the extensive power of this Gothic king, and tells us, that during his reign, the Garonne gave laws to the Tiber.

RIC's proper name was THEODORIC, but was changed in consequence of his legislative skill to EURIC or EVARIC, agreeable, (says GROTIUS) to an obvious derivation from *Evva* a law, and *rich* abundant; and this seems to receive confirmation from ISIDORE, who calls him both *Euridicus* and *Theudiricus*,² and from SIDONIUS in his poem to Lamprius.³

ALARIC the second succeeded to the Gothic throne with very different sentiments from his father. Influenced probably by his connection with THEODORIC THE OSTROGOTH, then reigning in Italy, whose Daughter he had married, this Prince with the assistance of the most learned men of his nation, published a complete revision of the *Theodosian Code*, together with the *Novel Constitutions*, the *Opinions* of PAULUS and CAIUS's *Institutes*.¹

² Loc. cit. Lib. 8. Ep. 9.

³ CIRONII. *Observ. Jur. canonic.* Lib. 5. cap. 2. GOTHOF. in *prolegom. Cod. Theodos.* cap. 3—5.

¹ ALARIC's Code is prefaced in the following words.

" ANIANUS vir spectabilis, ex præcepto. D. N. Gloriosissimi

" ALARICI Regis, hunc Codicem de Theodosianis Legibus

" atque Sententiis Juris, vel diversis Libris electum, Aduris

" (*Aire in Gascony*) Anno XXII regnante, edidit atque subscrip-

" sit."

DR. TAYLOR is of opinion, that by reason of many interpolations which were admitted, into this Code, it never was esteemed of much authority.^k But CIRONIUS assures us, it was by this compilation solely that those Provinces were constantly regulated, as long as the Roman Law prevailed among them and that it is the same, which on the revival of Jurisprudence, was adopted by Azo and ACCURSIUS in the Schools of Montpellier and Toulouse.^l A short time after the publication of this Code a great Revolution took place in the southern Provinces of Gaul. The deposition and death of Alaric was succeeded by the *Retreat of the Visigoths into Spain and the Establishment of the French Monarchy.*^m Together with the new possessors, new customs and institutions were necessarily introduced; yet the Roman Law still main-

“*fit.*” This ANIANUS was Chancellor at the Court of Alaric and composed some commentaries on the works of Paulus, which were inserted in this Compilation.

^k *Elements of Civil Law*, p. 12.

^l CIRONIUS. *Loc. cit.*

^m The Franks under CLOVIS took possession of the provinces of Narbonne and Aquitaine, A. D. 508. But the final establishment of the French Monarchy cannot properly be fixed till the year 536.

tained

tained its ground; for we read that notwithstanding the publication of the *RIPUARIAN* and *SALIC CODES*,ⁿ the Roman subjects were indulged in the free use of the Theodosian Laws, especially in cases of Marriage, inheritance and other important transactions of private life; points on which even the barbarians themselves are known to have made frequent references to them. “*Inter Romanos negotia Caesarum Romanis Legibus præcipimus terminari*” and “*Salvâ constitutione Legis Romanæ in eis qui secundum illam vivunt,*” are indulgencies, which constantly occur in the Gothic Codes,^o and CIRONIUS, (whose profound researches into the political antiquities of France entitle him to particular attention on this subject) goes so far as to assert that, at the period we are speaking of, “The Franks and Gauls in general made use of the Gothic and Roman Laws indifferently, yet with a decided preference in all important business to

ⁿ The *SALIC LAW* was compiled very early in the 5th century, and was confirmed by Pharamond about the year 424. The *CUSTOMS* of the *RIPUARIAN*’s were collected into a body rather later, and it was not till the end of the 8th century that they were completed and published by Royal Authority. LINDENBROG, *Prolegomena Legum Antiquarum*. p. 4. &c.

^o *Lex Burgundionum*, tit. 55. L. 2. *Leges Salicæ*. tit. 32.

the

the latter.^p” In the Capitularies of CHARLEMAGNE we discover the same reverence for these laws. “We ordain, says he, this
 “for the observance of such as acknowledge
 “our national law. De aliis autem qui
 “secundum Legem Romanam vivunt, nihil
 “aliud nisi quod in eisdem legibus continetur
 “definimus.^q”

During the first years of the Visigothic settlements in Spain, it is difficult to determine what was the real state of the Roman Laws in that country; for though many edicts are to be found, expressly prohibiting the use and introduction of any foreign laws or customs whatever, yet by a strange inconsistency, the compilations of that time abound with them, particularly with extracts from the Theodosian Code.^r In the reign of LEOVIGILD, A. D. 608. the Theodorician Laws already mentioned, being first carefully revised and augmented, were published under the new title of the VISIGOTHIC CODE, a Compilation which is considered as the *Source of Spanish Jurisprudence*. It is divided into XII Books, and is thought

^p CIRON. Loc. cit.

^q Lib. 4. cap. 47. and again Lib. 5. cap. 13. 23.

^r LINDENBROG. Loc. cit.

to have been framed after the model of Justinian's work ; it contains a great mixture of Roman and Gothic institutions, and (what is not very usual in the writings of that age) is drawn up in very pure latinity.* " Even in these days (says Cujacius) we often have recourse to the *Visigothic Code*, which is evidently compiled in imitation of JUSTINIAN'S. And this we do, not only because it contains so much of the spirit and matter of the Roman Civil Law, but because, unlike the stupid compilations of other people which cannot be read without disgust, it is written in a style and manner which, inclines me to believe that these provinces had arrived at a pitch of refinement much beyond their neighbours." From this peculiar excellence, its authority extended beyond the limits of Spain, was admitted by the Burgundians and Saxons, and may be traced in the Capitularies of CHARLEMAGNE and of many of his successors. We are even told that the Saracens acknowledged the equity and wisdom of the Visigothic Laws, and in many cases adopted them." The Spanish kings also, ac-

* CIRONIUS ut supra. cap. 7.

† *De Feudis*. Lib. 2. tit. 11.

‡ DUCK. *De Ufu et Auctoritate Jur. civ. &c.* Lib. 2. cap. 6. sect. 15.

ording

cording to GROTIUS, when they recovered
 any of their provinces out of the hands of the
 Moors, constantly bound the inhabitants to an
 observance of them; "Harum enim Legum
 "Corpus et olim, et nunc dicitur fons verus
 "Hispanici juris." ^w A Code of Laws so
 successfully compiled and propagated, must
 have given a fatal blow to the Roman Civil
 Law, which, till this event took place, had
 met with no opposition or discouragement.
 We now begin to meet with many prohi-
 bitory edicts conceived in the following
 manner: "There are many foreign laws
 "and institutions crept in among us, which,
 "though they please by reason of the elo-
 "quent style in which they are written, are
 "nevertheless full of inconsistencies. There-
 "fore considering the present Code which
 "we have promulged to be fully sufficient
 "to answer every purpose of Legislation
 "among us, we prohibit all our subjects
 "henceforth having recourse to the Roman
 "Laws, or to perplex the forms of Justice

^w GROTIUS, *In prolegom. Hist. Goth.* p. 4. The Visigothic
 Code may be consulted in LINDENBROG's Collection of An-
 cient Laws.

178 ILLUSTRATIONS.

“ by appeals to any foreign Code what-
“ ever.”^x

National prejudice, as may reasonably be supposed, in process of time co-operated with these severe prohibitions in suppressing the Roman Law; for it is certain that from this period no proof can be produced of their existence in those provinces till towards the latter end of the 13th century, when ALPHONSO X. is said to have been so struck with their excellence that he ordered them to be translated into the Spanish tongue, and afterwards by a favourable Edict restored their authority.^y

From the whole of what has been advanced, the following conclusions may, I think, be drawn with a tolerable degree of certainty. That during the 5th century, and prior to the existence of any written Code among the Barbarians, the ROMAN LAWS were generally admitted and considered by them as of very high authority: That they differed from the national Institutions which the Invaders brought with them into their new

^x *Leg. Visig.* Lib. 2. tit. 1—5—7—9, and again to the same purpose, tit. 9—10—13.

^y COVARRUVIAS. *Variarum Resolutionum*, Lib. 1. cap. 14.

settlements,

settlements, in having an *absolute* and *universal* influence, whereas the GOTHIC LAWS were merely conditional, and confined to some particular districts: That in consequence of those revolutions which happened in the sixth century, particularly the introduction of the SALIC, RIPUARIAN, and VISIGOTHIC Codes, the Laws of THEODOSIUS lost much of their authority, though the use of them was still permitted to the subjects of the empire dwelling in the Provinces; and even the Goths themselves would frequently appeal to them, in preference to all other foreign laws, on points where their own were silent or indecisive:² And that, notwithstanding the strong prohibitions under which they latterly appear to have laboured, it can scarcely be asserted that they were ever thoroughly extinguished; since the Gothic Legislators, aware of their extraordinary excellence, transferred so large a portion of them into their own compilations, that they effectually preserved the spi-

² They were regarded (says Dr. DUCK) as *Ratio Scripta*, and their authority may be supposed analagous to that of the *Rhodian Laws* with the Romans, who, having no maritime Code of their own, appealed to this in all Cases of necessity.

rit of the Roman Law, though they debased its form, and nominally denied its authority.^a

This slight sketch is sufficient for our present purpose. A more particular investigation of the subject will enter with greater propriety into the SECOND PART of this Work.

P. 52. [L]

THEODORIC inherited from his father THEODIMER the extensive countries which lie between the Adriatic and the Danube, and are comprehended under the general name of *Illyricum*. While yet a child he was delivered into the hands of LEO, then

^a The Lombards had settled in Italy almost eighty years before they formed any Code of their own. "ROTHARIS
" Rex Longobardorum leges, quas solâ memoriâ et usu reti-
" nebant, scriptorum serie composuit; Codicemque ipsum
" *Edictum* appellari præcepit." PAUL WARNEFRID. *De Gestis*
Longobard. lib. 4. cap. 44. GIANNONE speaks of a beau-
tiful MS. of this Edict in Lombard characters, in the Archives
of the Benedictine Monastery Della Cava, near Naples. *Ist.*
civ. di Napoli, lib. 4. cap. 6.

Emperor

Emperor of the East, as a pledge of amity between the two nations, and received the first rudiments of his education in the Schools of Constantinople.^b At the age of eighteen he was permitted to return to his native country, and upon the death of his father, A. D. 472, succeeded to his kingdom. The Emperor ZENO, Leo's successor, conscious of the abilities and ambition of Theodoric, and willing to secure the friendship of so powerful a neighbour, induced him by pressing invitations once more to visit the Constantinopolitan Court. Immediately upon his arrival he was loaded with honours, and appointed to posts of the highest dignity in the empire. "Inter proceres sui palatii illum collocavit, in arma sibi, eum filium adoptavit, de suisque stipendiis triumphum in Urbe donavit, factusque est Consul ordinarius—Et etiam equestrem statuum ad famam tanti viri ante regiam palatii locavit."^c Dissatisfied however with an inactive life, and anxious to signalize himself and his country by some splendid achievement, he conceived the noble idea of delivering Italy from the

^b "Educavit te in gremio civilitatis GRÆCIA, præfaga venturi." ENNODII, *Oratio paneygr. ad THEODORICUM*.

^c JORNANDES, *De rebus Geticis*, cap. 57,

hands of the barbarians, and of reviving in the West the original spirit of the Roman Constitution.^d “Why (said he, addressing himself to the Emperor) do you patiently suffer that fertile region, which your predecessors for a long series of years so gloriously governed, to be continually passing from one rude people to another? Permit me and my Countrymen at our own expense to have the glory of attempting its deliverance, and should we be so fortunate as to dispossess the barbarians, we will be content to receive it from your hands as the reward of our service.” The historian informs us, that having obtained permission of the Emperor, he immediately set forward upon the expedition; and entering Italy by the Venetian Territory, carried his arms without any material opposition, to the walls of Ravenna. After a long and obstinate siege, he at last possessed himself of this place, where, having put ODOACER to death, he was, A. D. 490, proclaimed KING of the

^d On this occasion GROTIUS very happily applies to THEODORIC, Claudian’s verse,

“Vindictet *Aræus* violatas *Advena* gentes.”

^e JORNANDES, Loc. cit.

GOTHS and ROMANS. If we may judge from the complection of affairs at that time, it was to the seasonable interposition of Theodoric that the Laws and Polity of Rome were indebted for their preservation. A very eminent Italian Historian declares, that were he called upon to point out the period at which his country laboured under the greatest wretchedness, it should be that which passed between the death of the third VALENTINIAN, and the accession of this Gothic King.^f “The Provinces (says he) were “perpetually harrassed by the incursions “of barbarous tribes rapidly dispossessing “each other, all was disorder and confusion; “the Laws were debased, and justice trodden down.”

The surprising reformation brought about by THEODORIC in every department of the State, and his admirable regulations in the Provinces, as they are correctly stated by his Minister CASSIODORUS, represent him to us in every point of view as a most amiable and illustrious prince, and justify the BISHOP of PAVIA in his warmest effusions of Panegy-

^f From A. D. 455, to A. D. 490.

^g GIANNONE *Istoria di Napoli*, Lib. 3. cap. 2.

ric^b. PROCOPIUS, who was a Greek, and consequently not naturally well affected to these strangers, seems notwithstanding to have been sensible of this, and forcibly recommends the Gothic Prince as a pattern of imitation to his countrymen.¹

To form a judgment of him from his Epistles and Edicts, his whole attention seems to have been occupied in promoting the prosperity and happiness of his people, in correcting abuses, in redressing injuries, in relieving the distressed, and in contriving various plans of reformation.^k What can be more laudable than the manner in which he constantly shews his zeal for the encouragement of legislation, and the re-establishment of the Roman Laws! “Quid enim
“ proficit (says he) barbaros removisse con-
“ fusos, nisi vivatur ex legibus?” and again,
“ Jura veterum, ad nostram cupimus reve-
“ rentiam custodiri, delectamur enim Jure

^b See ENNODIUS, Loc. cit. “Planeque si quis cultissimi,
“ clementissimique imperii formam conspiceret voluerit, ei ego
“ legendas censeam *Regum Ostrogothorum Epistolas*, quas CAS-
“ SIODORUS collectas edidit.” GROTIUS, *In prolegomena ad*
Hist. Goth.

¹ Hist. Gothor. Lib. 1.

^k CASSIODORUS, passim.

“ Romano

“vivere.¹” Indeed we may observe that upon every occasion of interference the excellent disposition of this Prince breaks out in sentiments full of benignity and true greatness, and that in all his regulations he manifests a real concern for the interests of religious, moral, and civil virtue.^m It would be endless to dwell upon this part of THEODORIC’s character, which has been so fully drawn by most of the historians of this period. There is one point of it not so generally known.ⁿ

Though according to a custom of the Emperors since the reign of HONORIUS, his resi-

¹ Ut supra, Lib. 3. Epist. 43.

^m See CASSIOD. Lib. 4. Epist. 17. On the restitution of Possessions to the Churches of Narbonne. Lib. 3. Ep. 44. To relieve the oppressed Professors at Arles; to whom he promises a regular provision, assuring them “Non minus est quod nostris
“*verbis* quam quod *horreis* continetur.” And he prefaces his Epistle to redress an injured individual with this noble sentiment: “Propositum Regale est, pressis labe fortunæ, pietatis remedio subvenire, et acerbos casus injuriæ, meliore
“*sorte* mutare.” Lib. 4. Ep. 41.

ⁿ The celebrated BOETHIUS was a leading man at the Court of THEODORIC. There is a curious Epistle written to him by the king, in which he desires him to construct a water-clock and sun-dial for a present to a neighbouring Prince. CASSIOD. Lib. 1. Epist. 45.

dence was at *Ravenna*, yet he did not, like most of his predecessors, withdraw his attention from the ancient seat of empire. The ruinous temples and deserted palaces of Rome presented a scene of solemn magnificence not likely to escape the notice of such a Prince as THEODORIC. It was in fact his favourite maxim, “*Si esset humanis rebus ulla consideratio Romanam Pulchritudinem non vigiliæ, sed sola deberet Reverentia custodire,*” and various are the edicts which were promulged in consequence of this disposition to encourage the carrying on works of public utility in that city.^o At one time we find him setting apart a portion of his annual revenue for repairing and beautifying the public edifices, the bridges and aqueducts.^p At another, giving orders for rebuilding the private houses of such of the inhabitants as may express a desire of returning to Rome. “Do not (says he) the beasts of the field and every kind of animal feel a natural attachment to their ancient habitations, and return to them after absence with double satisfaction? *Quid jam de Româ de-*

^o CASSIODOR. Lib. 1. Ep. 25. Lib. 2. Ep. 7.—27. Lib. 4. Ep. 30—31—51. Lib. 5. Ep. 9.

^p Lib. 2. Ep. 34.

bemus dicere, quàm fas est ab ipsis liberis plus amari?⁹” But THEODORIC did not content himself with merely publishing general orders for rebuilding and repairing; he appears to have extended his care still further. It had been a frequent custom before his time to destroy or deface the public edifices for the sake of the materials: This he very strictly forbids in the following words. “Ea
 “custodiri volumus maxime quæ urbis faci-
 “em videntur ornare. Quis enim dubitet
 “fabricarum miracula hac provisione servata?
 “Ut antiqui principes nobis meritò debeant
 “suas laudes, quorum fabricis dedimus lon-
 “gissimam juventutem, ut pristinâ novitate
 “reluceant quæ jam fuerant vetustosâ senec-
 “tute fuscata? Siquid igitur deficiente senio
 “fuerit demolitum, pervigili celeritate repa-
 “retur.” But of all the Edicts of Theodo-
 ric there is none perhaps which affords a more
 lively idea of his humanity than that which
 he published, to alleviate the miseries to

⁹ Lib. 1. Ep. 21.

In his liberality to ROME he did not forget RAVENNA. See Lib. 1. Ep. 6.—Lib. 2. Ep. 9, 10, 19.—Lib. 5. Ep. 38. but more especially Lib. 5. Ep. 16. and the four following, which contain orders for repairing the walls and arsenals, and a variety of other naval regulations in that port.

^r Loc. cit.

which the inhabitants of *Naples* and *Nola* were exposed in consequence of a sudden eruption of *Vesuvius*. It is drawn up with great spirit by the pen of *CASSIODORUS*, and seems every way calculated to inspire those tender sentiments which so melancholy an occasion required.*

These instances are sufficient to shew how uniformly attentive this Prince was to the welfare of his people, not only in matters of public concern, but on all private occasions also, and that his power was seldom exerted but for the relief or prevention of physical and political evil. It was the constant object of his *Epistles* and *Edicts*, in the conception of which it is difficult to determine whether his wisdom or his virtue are most conspicuous. With great justice therefore we may apply to this part of the Emperor's character the compliment which *PLINY* paid to *TRA-*

* Lib. 4. cap. 50. The style of *CASSIODORUS* has been justly censured for being too quaint and declamatory. The poetical painting in this *Epistle* is certainly too strong; though perhaps the generous principle which occasioned it may in this instance prove a sufficient apology.

This writer is mentioned "as the first who ever digested a series of royal Charts and Instruments." *WARTON'S Hist. of English Poetry*. Vol. 1. Dissert. 2.

JAN, "Magnificus in publicum, id maxime
 "providit, ut sifteret ruinas, solitudinem
 "pelleret, atque ingentia opera eodem quo
 "extructa erant animo, ab interitu vindica-
 "ret; quare non erga homines modo, sed
 "erga tecta ipsa summopere promeruit."

Upon his death bed, THEODORIC appointed his grandson ATHALARIC, then about ten years old, for his successor; leaving the Regency and the care of his education to his mother AMALASUNTHA, a Princess, as appears, eminently qualified for such important charges. His last hours were employed in a review of his conduct during a fortunate reign of almost forty years, and in recommending his successors to adopt the same system which he had so uniformly adhered to; concluding (says JORNANDES) with the following injunctions; "Ut Regem colerent, "Senatum, Populumque Romanum amarent,

* PLIN. *Trajan. Panegy.* *The Decline and Fall of the City of Rome*, to which Mr. GIBBON tells us his plan was originally confined, is a copious and awful subject, and seems peculiarly calculated for the classical pen of this splendid historian; the accomplishment of his promise therefore every friend of ancient learning and virtù must anxiously expect. See his *History of the Decline and Fall of the Roman Empire*. Vol. 3. chap. 36. note 43.

" Prin-

“Principemque Orientalem placatum semper, propitiumque haberent.” For some few years after his death this advice was most rigorously followed by the Regent, and strongly inculcated into her Pupil, of whom the Italian Provinces began to form the most favourable expectations.^w But the happy interval of tranquillity was at an end, for upon the death of ATHALARIC, A. D. 534. the tempest which during the mild administration of his grandfather was thought to have been finally dispersed, returned with redoubled violence over Italy, and in its fury, not only swept away the venerable remains of art and civil wisdom, but in a great measure extinguished the original Language and Manners of the inhabitants.*

^w *De reb. Get.* cap. 59. It was in the very year of THEODORIC's death, that JUSTINIAN, having triumphed over the Vandals in Africa, sent Belisarius against the Goths in Italy.

^w CASSIOD. Lib. 8. Ep. 1, 2, 3, 4. This and the following book consists entirely of ATHALARIC's Epistles and Edicts, in all of which he professes a sincere disposition to pursue the plan laid down by his Grandfather, together with a strong desire to preserve the friendship of the Constantinopolitan Court and to promote a lasting union between the Goths and Romans.

* The LOMBARDS invaded Italy and laid the foundation of their kingdom at Pavia A. D. 568.

P. 64. [M]

A singular fate attended the Laws of JUSTINIAN. From the unfortunate situation of affairs in the western provinces they were never generally received in that part of the empire; in less than 40 years after the Emperor's death they began to lose their authority at Constantinople, and in the 9th Century became entirely obsolete.¹

During the reigns of JUSTINIAN's three immediate successors, his books appear to have maintained their ground: they were taught in the Schools and quoted in the Courts of justice; the language in which they were written was in common use, and the lawyers not only pleaded, but published also their decrees and opinions in the Latin tongue.² The shock which the empire re-

¹ For the present I shall acquiesce in the commonly received opinion. The controversies which this subject has occasioned, are connected with the History of a future period.

² "Extulit tamen (says GRAVINA of these times) posterior ætas nonnullos, qui vitiosæ consuetudini cultu et delectu verborum obstiterunt, ac præ ceteris JURISCONSULTI, quos interpretandi necessitas in assiduâ legum antiquarum et veterum vocum investigatione detinebat; quo ex studio inhæsit eorum dictioni prisca verborum proprietas et dignitas." *De Lingua latinâ Dialogus.*

ceived

ceived under the weak administration of PHOCAS^a by the loss of many of its western provinces and the ensuing scene of desolation which called off the public attention from every species of liberal pursuit, proved very detrimental to the study and practice of the Law. Edicts hastily conceived and drawn up merely to answer the purpose of particular emergencies, were added time after time to JUSTINIAN'S Code, and formed a striking contrast to that strain of simplicity and universal justice which marks all its decisions. These Novel Constitutions, together with a Greek translation of some of those law tracts from which the Pandects had been compiled and the Greek version of JUSTINIAN'S works by THALELÆUS and THEOPHILUS, formed the body of eastern jurisprudence from the beginning of the 7th to the end of the 9th century.

The revolution which took place under the Emperor BASILIUS and his two sons, has been already spoken of. The motives by which they were actuated in their undertaking have been variously represented. On the one hand it has been attributed to an ungenerous ambition of raising up to themselves a monu-

^a A. D. 602.

ment of glory upon the ruins of JUSTINIAN's labours; meanly conceiving that by copying his plan, and then destroying the model, posterity would necessarily regard their work as an original compilation. In allusion to this, the Chancellor CIRONIUS speaking of the difficulty which IRNERIUS had, in the 12th century to discover a complete edition of JUSTINIAN's Laws, adds, "This can be attributed to no other cause, than the ambition of LEO, who, to give greater dignity and consequence to his own compilation, used every means to suppress JUSTINIAN's work: an attempt not very difficult if we consider the miserable state of the Latin language at that time in the Greek empire.^b"

They on the other hand who wish to exculpate the emperors, tell us, that an earnest desire of working a general reform in the civil administration, which had been so shamefully neglected during the turbulent reigns of their predecessors, was the sole object which led them to undertake this general revival: That upon the maturest deliberation it was agreed, that many parts of JUSTINIAN's Code

^b Observat. Jur. Canon. Lib. 5. cap. 5.

were become obsolete and others altogether unapplicable by reason of the material changes which three centuries had made in the police and manners of the Greek Empire; and that at best, the excellent intention of that emperor, of compressing juridical knowledge into as small a compass as possible, was in fact not fully answered by his compilation; they therefore were resolved to use their best endeavours to procure for their subjects this grand desideratum, and for the purpose to comprize in one volume the whole substance of the *Institutes*, *Pandects*, *Code* and *Novels*, together with all the subsequent Constitutions of general use and authority.^c That as to the suppression of the Roman Law and the obscurity in which JUSTINIAN'S works continued for so long a time, this was by no means owing (as the Lawyers of the West assert) to the malevolence of the Greek compilers, but may be more naturally attributed to three very obvious causes namely, *The Decay of the Latin Language. The Earthquake which laid waste the Academy at BERYTUS; and the Desolation spread by the Barbarians over the Western Provinces.* To

^c Proœm. ad Basilic. (ASSEMANNI *Bibliotheca Juris Orient.* Lib. 2. cap. 16.)

these

these has been added, the dreadful conflagration at Constantinople in the reign of ZENO, which (say the advocates for BASILIUS) destroyed one hundred and twenty thousand volumes; but, as that Emperor lived more than forty years before JUSTINIAN, it is, certain, the compilation in question could not then have suffered, and as to the juridical works of the more ancient Lawyers, every title of the Pandects sufficiently proves their existence long after this calamity. In fact, whatever was their conduct towards JUSTINIAN, the Greek Compilers by omitting to quote their authorities after the liberal example of their predecessors, were in a great measure instrumental to the loss of many inestimable tracts of ancient jurisprudence. Nor was this science the only one which suffered by the ill directed zeal of those times. We are informed by ZONARAS, that, from a laudable wish of exciting in their subjects that love of letters for which they themselves were remarkable, both LEO and CONSTANTINE employed a number of able men in making Epitomes, Extracts and Imitations of the most celebrated greek and roman writers,^d and thus unfortunately were counteracting their good

Annales, Vol. 3. p. 155. Edit. Paris.

intentions by the very means they employed for promoting them. It is observable that from this period solid learning declined apace; For the Greeks of the lower empire, naturally inquisitive, but indolent, had now an opportunity of acquiring knowledge without the labour of consulting original authors: Many of these therefore, being no longer in request were suffered to perish to the irreparable loss of succeeding times. With respect to the Roman Law (by whatever fate it happened) it is certain that after the age of BASILIUS and his Sons, we hear nothing more of JUSTINIAN's works at Constantinople, either in the Schools, or at the Tribunals; and the Eastern Empire, till it passed into the hands of the Turks in the year 1453, continued to be regulated solely by the BASILICAL CODE.*

* FREHER. *Chronologia Juris*. ASSEMAN. *Bibliotheca Jur. Orient.* p. 167.

The Popes, during these rude ages, from political motives, were very strenuous defenders of the Roman Laws in the West. It was their interest to use every means to check the alarming progress of the Lombards in the neighbouring provinces, by strengthening the hands of the Greek Emperors and enabling them to maintain the small territory which remained unconquered in Italy. LEO 4th in the 9th Century writes to LOTHARIUS I. beseeching him to permit a free use

of

P. 73. [N]

THE principal circumstances relating to the *Discovery* of JUSTINIAN'S PANDECTS, at Amalfi in the year 1135, or 1137, and their conveyance from thence to Pisa, though supported by many great authorities, have been very much disputed by modern writers.^f A

of the Roman Law: and CONRINGIUS, *De Orig. Juris Germanici*, cap. 20. takes occasion from this, to assert, that JUSTINIAN'S works were, in repute in many parts of Italy, but particularly in Rome and the Exarchate, many years before the reign of the 2d LOTHARIUS, and that the Novels were referred to on ecclesiastical matters. See the *Epistles* of GREGORY, Lib. 11. Ep. 53. Lib. 12. Ep. 51 and GRATIAN'S *Decretal.* passim.

^f GUIDO PANCIROLLUS, says, that in his time (the 16th Century) it was the opinion of many that the PANDECTS, were first discovered A. D. 1128, in a library which had belonged to the Emperors at RAVENNA, and were from thence transported by LOTHARIUS to the Academy at BOLOGNA. But he himself believes this MS. to have been the CODE, and agrees in the common opinion about the discovery of the PANDECTS. *De claris Legum Interpretibus*, Lib. 2. cap. 13. There are some also, who upon the authority of an old Chronicle, assert that they were taught at BOLOGNA as early as the beginning of the 11th Century, by LANFRANC, afterwards Archbishop of Canterbury. MURATORI *Antiq. Med. Ævi.* Dissert. 44.

gation

full investigation of this subject will be entered into in its proper place, the Second Part of this work. For the present I shall be content to speak of it in general terms according to the received opinion.

LOTHARIUS the 2d, we are told, being at war with ROGER king of Sicily, laid siege to the town of *Amalfi*, and among the plunder of that place discovered an old MS. Upon close inspection, it was found to be that large Body of Jurisprudence compiled by JUSTINIAN, which, ever since the days of Charlemagne, had been known (by name only) to the Civilians, but had hitherto escaped their most diligent search. The Pisans, who had assisted LOTHARIUS, at this siege with a fleet of ships, requested of him to bestow upon them this MS. as the sole reward of their services. They obtained their request, and conveyed it home with them. It remained from that time till the year 1406, carefully preserved in the city of Pisa, from whence with much more plunder it was then carried to Florence, where it has ever since been kept, and is regarded by that people as an inestimable literary treasure.^h

^h SIGONIUS, *De Regno Italiæ*, Lib. 11. p. 270. Edit. Franc. 1591. Muratori, *Antiq. Medii Ævi*, Tom. 3. Dissert. 44.

GIANNONE,

HENRY BRENCMANN, who, at the beginning of this Century, spent many years in examining upon the spot, the various memorials extant on this subject, cites in confirmation of the story, an ancient MS. of Pisan Annals in the Dominican Convent at Bologna, which says, that “on the 4th of August, in the year 1135, forty six Pisan gallies
“ joined LOTHARIUS at the siege of Amalfi,
“ that the place surrendered, and that among
“ the plunder, JUSTINIAN’s Pandects were

GIANNONE, *Ist. civ. di Nap*, Lib. 3. cap. 3. and Lib. 7. cap. 2.

Upon close examination it perhaps will be found that the circumstance of AMALFI’s *commercial consequence* during the 11th and 12th Centuries, and its great communication with Constantinople, gives more probability to the story, than has generally been allowed. Especially when we consider that the people of that place, had (at the period of which we are speaking) drawn up a Code of Maritime Laws, under the title of TABULA AMALFITANA, which was acknowledged by all the neighbouring states, and continued in force for many centuries after, and that these Laws, were compiled for the most part from the *Rhodian Laws*, by which the Romans, and after them, the Greek Emperors regulated all matters of trade and navigation, and which were on that account admitted into the Pandects. MARINO FRECCIA *De Subfeudis. De Officio Admiral*. Lib. 1. num. 8. WELWOOD’s *Abridgement of Sea Laws*. SCHARDIUS’s *collection of the Rhodian Laws*.

found

“found.” He differs however from most others, in denying that the Pisans received this MS. from *LOTHARIUS* as a recompense; and asserts that it was conveyed away privately in a small chest by one of their soldiers, who at the time supposed it to contain money or jewels; but that upon discovering his mistake, he delivered it into the hands of the magistrates.

It has been said that the Roman Law was very much cultivated about this time by the Pisans, but it does not appear that either their curiosity or their zeal was awakened by this discovery, for though it remained in their city near three centuries, we have no testimonies of its having ever been either copied or illustrated. The most eventful part of its history commences after its removal to Florence, where it has been visited at different periods by some of the most learned men in Europe. *POLITIAN* in the 15th century, after a very minute examination, gives it as his opinion that it is a MS. of *JUSTINIAN*’s age, an opinion which he tells us is not hastily delivered, “*Hoc enim mihi inspicere, per otium licuit, rimarique omnia et Olfacere; quæque vellem excerpere diligenter, et cum vulgatis exemplaribus com-*
“pare.

ILLUSTRATIONS. 201

“rare.^h” In one of his letters from Florence he says—“This copy of the Pandects is inestimable. ACCURSIUS and all accurate lawyers refer to it in doubtful cases as the most faithful, and consider any variations from it, which may occur in other copies, as errors. They hold it in such veneration here, that whenever it is produced, which rarely happens but upon some extraordinary occasion, it is by torch light; the Magistrates and Monks, who always attend, standing with their heads uncovered.ⁱ” BUDÆUS, who visited Florence in the following century, gives the same account of this ceremony, and adds, “that it was then esteemed so great a favour to be admitted to read it, that had he not been there in quality of an Ambassador, he probably must have failed in his application.^k” After POLITIAN, the celebrated ANT. AUGUSTINUS, at the age of twenty one, passed a considerable time in transcribing and collating this MS. upon which, on his arrival at Venice in the year 1543, he published his

^h Lib. 10. Ep. 14. and again *Miscell.* cap. 41. The same writer has drawn up in the Epistolary form, the Index which stands at the head of the Pandects. Lib. 5. Ep. 10.

ⁱ Lib. 10. Epist. 5.

^k Annotat. in Pandect. p. 67. edit. Basil. 1557.

very learned *Emendations* and *Opinions*, and some time after, another work, *De Nominibus Propriis Pandecti Florentini*. He allows it to be of very high antiquity, but does not believe it so old as the age of JUSTINIAN by more than two centuries.¹

THEODORE GRONOVIVS, who through the interest of MAGLIABECCHI studied the MS. for some months and published his remarks and emendations in the following year 1685, perfectly agrees with this opinion of AUGUSTINUS, and it has been in general adopted by succeeding writers. But BRENCMANN, together with that elegant Antiquary ANT. MAR. SALVINI, after considering it most accurately and comparing it with Charters and Instruments of various ages, is inclined to carry it back to the close of the 6th Century, a period not very remote from the æra of its compilation.^m

¹ AUGUSTINUS. *Emendat. Pandect.* Lib. 1. cap. 1. MABILLON. *De Re Diplomaticâ.* Lib. 5. Tab. 7. p. 357. has given a specimen of the Florentine Pandects communicated to him by MAGLIABECCHI, who was then Librarian to the Grand Duke.

^m BRENCMANN in the year 1721 published the first part of his large work, on the *History of the Florentine Pandects*. It drew him some time after into a very smart controversy on the subject with some German and Italian Civilians, the principal

But, whatever be the age of this curious MS. it is certain that in consequence of its discovery, the Study of the Roman Civil Law began to be zealously cultivated in various parts of Europe. The Academy of BOLOGNA had for many years been in high repute, and at this time the celebrated IRNERIUS, who had previously studied and taught the civil law at Constantinople, was a professor there. Some of the Italian writers indeed assert, that long before the year 1137 he obtained permission to read lectures on the works of Justinian, and had illustrated many parts of the Pandects from the Copy said to have been brought from Ravenna."

To the school of this civilian we are indebted for the laborious commentators of the following age; whose glosses, notwithstanding

principal heads of which are clearly stated in the 3d Vol. of the Supplement to the *Acta Eruditorum*, Anno 1739. p. 165 et seqq. and again, Vol. 4. p. 164. et seqq. BRENCMANN's most formidable Antagonists in this dispute, were GUIDO GRANDI, a Professor of Mathematics at Pisa, and BERNARD TANUCCI, public reader of law at the same place.

ⁿ MURATORI's Dissertation on the Fate of learning in Italy from the year 1100. particularly in the Academy of BOLOGNA. Tom. 3. *Antichita Ital.* CONRADE, Abbot of the Premontré Order at Ursburg, asserts the same in his *Chronicle*. p. 342. ad Annum 1126.

they are strongly marked with the barbarisms and absurdities of those times, served to clear away difficulties and to open a road for the more elegant writers of the 16th century, when among other useful sciences, JURISPRUDENCE resumed its ancient dignity, and began to be considered as a necessary branch of polite literature.*

* We may be justified perhaps in affirming that neither POLITIAN, ERASMUS or the SCALIGERS contributed more to the promotion of elegant learning by their historical and philological labours, than ACCURSIUS, PITHOU and CUJACIUS did by their juridical works.

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ERRA-

ERRATA.

- Page 16. l. 15. *for Pontifical read Pontifical*
 18. l. 16. *for Digest — Digests*
 31. l. 15. P. 32. l. 5 & 15 *for Consistory — Council*
 46. N. 4. l. 4. *for voluntary—voluntarily*
 48. l. 16. P. 49. N. 1. *for Collectio — Collatio*
 50. N. 1. l. 13. *for dicimus — discimus*
 59. N. 9. l. 16. *for by Holoander — from Holoander's.*
Ibid. — *after first add correct one,*
 73. l. 12. *for laid — lay*
 176. l. 7. *for Visigothic — Visigothic*
 178. l. 5. *for Law — Laws*



